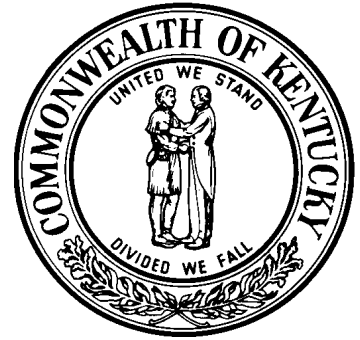


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 44, NUMBER 2
TUESDAY, AUGUST 1, 2017

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 14, 2017.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 14, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 179-181 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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VOLUME 44, NUMBER 2 – AUGUST 1, 2017

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, AUGUST 14, 2017, at 1:00 p.m., Room 149 Capitol Annex**

HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Educational Excellence Scholarship Program

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

Teaching Certificates

16 KAR 2:020. Occupation-based career and technical education certification. (Amended After Comments)

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation. (Amended After Comments)

Advanced Certification and Rank

16 KAR 8:040. Ranking of occupation-based career and technical education teachers. (Amended After Comments)

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:010. Voter identification cards.

31 KAR 4:040. Procedures for absentee voting in county clerk's office.

Help America Vote Act 2002

31 KAR 6:020. Provisional voting.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Administrative Services**

Military Assistance Trust Funds

106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy**

Board

201 KAR 2:076. Compounding. (Not Amended After Comments)

Board of Embalmers and Funeral Directors

Board

201 KAR 15:030. Fees.

201 KAR 15:050. Apprenticeship and supervision requirements.

201 KAR 15:110. Funeral establishment criteria.

Board of Licensure for Occupational Therapy

Board

201 KAR 28:200. Continuing competence.

**PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Registration for Professional Geologists**

Board

201 KAR 31:010. Fees.

**GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors**

Board

201 KAR 35:080. Voluntary inactive and retired status.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources**

Fish

301 KAR 1:152 & E. Asian Carp and Scaled Rough Fish Harvest Program. ("E" Expires 11/22/2017)

301 KAR 1:195. Repeal of 301 KAR 1:192.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

Water Patrol

301 KAR 6:005. Boat registration fees.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

Public Water Supply

401 KAR 8:010. Definitions for 401 KAR Chapter 8. (Not Amended After Comments)

401 KAR 8:011. Repeal of 401 KAR 8:070, 401 KAR 8:101, 401 KAR 8:550, and 401 KAR 8:600. (Deferred from June)

401 KAR 8:020. Public and semipublic water systems; submetering; general provisions. (Amended After Comments)

401 KAR 8:040. Laboratory certification. (Deferred from June)

401 KAR 8:075. Consumer confidence reports and public notification. (Amended After Comments)

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401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8. (Not Amended After Comments)

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, maximum contaminant levels, radionuclides, and secondary standards. (Deferred from June)

Division of Waste Management

Solid Waste Planning

401 KAR 49:011. General provisions relating to area solid waste management plans. (Amended After Comments)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration. (Not Amended After Comments)

401 KAR 49:091. Repeal of 401 KAR 49:040, 401 KAR 49:090, and 401 KAR 49:210. (Deferred from July)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services community. (Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

Office of Learning Support Services

704 KAR 7:051. Repeal of 704 KAR 7:050.

Department of Workplace Development

Office of Employment and Training

Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim. (Not Amended After Comments) (Deferred from January)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Licensing

804 KAR 4:230. Extended hours supplemental licenses. (Deferred from July)

Local Administrators

804 KAR 10:010. Appointment notification of local administrator. (Deferred from July)

Department of Insurance

Health Insurance Contracts

806 KAR 17:575. Pharmacy benefit managers. (Amended After Comments)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

Certificate of Need

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

900 KAR 6:125. Certificate of need annual surveys. (Amended After Comments)

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. (Deferred from July)

900 KAR 7:040. Release of public data sets for health care discharge data. (Deferred from July)

Department for Public Health

Office of Inspector General

Controlled Substances

902 KAR 55:015. Schedules of controlled substances.

902 KAR 55:040. Excluded nonnarcotic substances.

902 KAR 55:041. Repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035.

902 KAR 55:095. Prescription for Schedule II controlled substance- authorization of oral prescription for immediate administration, facsimile transmission, or partial filing.

Department for Medicaid Services

Medicaid Services

907 KAR 1:041E. Repeal of 907 KAR 1:018 and 907 KAR 1:019. ("E" expires 9/27/2017) (Deferred from June)

Payments and Services

907 KAR 3:066 & E. Nonemergency medical transportation waiver services and payments. ("E" expires 12/11/2017)

907 KAR 3:206E. Repeal of 907 KAR 3:205. ("E" expires 9/27/2017) (Deferred from June)

Outpatient Pharmacy Program

907 KAR 23:001 & E. Definitions for 907 KAR Chapter 23. ("E" expires 9/27/2017) (Deferred from June)

907 KAR 23:010 & E. Outpatient pharmacy program. ("E" expires 10/26/2017) (Amended After Comments)

907 KAR 23:020 & E. Reimbursement for outpatient drugs. ("E" expires 10/26/2017) (Amended After Comments)

Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 3:025. Technical requirements.

921 KAR 3:042. Supplemental Nutrition Assistance Program employment and training program.

REMOVED FROM AUGUST 2018 AGENDA

GENERAL GOVERNMENT CABINET

Board of Licensure for Occupational Therapy

Board

201 KAR 28:235. Telehealth occupational therapy services. (Comments Received; SOC due 8/15/2017)

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Board of Licensed Professional Counselors

Board

~~201 KAR 36:065. Licensed professional clinical counselor supervisor. (Withdrawn 7/13/2017)~~

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing**

Administration

~~601 KAR 2:030 & E. Ignition interlock. ("E" Expires 11/21/2017)(Comments Received; SOC due 8/15/2017)~~

**PUBLIC PROTECTION CABINET
Department of Financial Institutions**

Securities

~~808 KAR 10:081. Repeal of 808 KAR 10:080, 808 KAR 10:300, and 808 KAR 10:340. (Withdrawn 7/17/2017)~~

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health**

Radon

~~902 KAR 95:040. Radon Contractor Certification Program. (Comments Received; SOC ext., due 8/15/2017)~~

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations, which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
501 KAR 6:270E

The Kentucky Department of Corrections has experienced an increase in inmate population, creating serious concerns with operations and management of prisoners. There has been an increase in the state inmate population, which has caused overcrowding and the state has had difficulty moving state prisoners from county jails to state prisons. Senate Bill 120 amends statutes to address issues that impact the overcrowding and this regulation is being amended to address the changes made in the statutes. This emergency regulation is necessary to meet an imminent threat to the public health, safety and welfare. An ordinary regulation is not sufficient. An ordinary administrative regulation will prevent the regulation from being effective at the time the statutory changes become effective. Time is of the essence in addressing issues that impact the overcrowding and inmate movement. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. MATTHEW G. BEVIN, Governor
JAMES ERWIN, Acting Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Emergency Amendment)

501 KAR 6:270E. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551
EFFECTIVE: June 28, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," June 28, 2017[August 11, 2015], are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Access to Services (Amended 6/4/15)
- 27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/4/15)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 8/11/15)
- 27-09-01 Community Resources (Amended 6/4/15)
- 27-10-01 Pretrial Diversion (Amended 6/4/15)
- 27-10-02 Mandatory Re-Entry Supervision (Amended 6/4/15)
- 27-10-03 Post-incarceration Supervision (Amended 6/4/15)
- 27-11-01 Citizen Complaints (Amended 6/4/15)
- 27-11-02 Employee-Offender Interaction (Amended 6/4/15)
- 27-12-01 Case Classification (Amended 8/11/15)
- 27-12-03 Initial Interview and Intake of New Case (Amended 8/11/15)
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 6/4/15)
- 27-12-05 Releasee's Report Document (Amended 6/4/15)
- 27-12-06 Grievance Procedures for Offenders (Amended 6/4/15)

- 27-12-07 Administrative Caseloads (Amended 6/4/15)
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 6/4/15)
- 27-12-13 Community Service Work (Amended 8/11/15)
- 27-12-14 Offender Travel (Amended 6/4/15)
- 27-13-01 Drug and Alcohol Testing, Assessment, and Referral of Offenders (Amended 6/4/15)
- 27-14-01 Interstate Compact (Amended 6/4/15)
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 6/4/15)
- 27-15-02 Home Incarceration, Curfew, and Electronic Monitoring for Community Offenders (Added 6/4/15)
- 27-15-03 Graduated Sanctions and Discretionary Detention (Amended 6/28/17[6/4/15])
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 8/11/15)
- 27-17-01 Absconder Procedure (Amended 7/11/12)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 7/11/12)
- 27-19-01 Preliminary Revocation Hearing (Amended 6/4/15)
- 27-20-03 Parole Compliance Credit (Amended 6/28/17[3/12/12])
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11)
- 27-23-01 In-state Transfer (Amended 7/11/12)
- 27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)
- 27-24-02 Reinstatement of Offenders to Active Supervision (Amended 7/11/12)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12)
- 27-30-01 Sex Offender Registration (Amended 12/16/11)
- 27-30-02 Sex Offender Supervision (Amended 7/11/12)
- 28-01-01 Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)
- 28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 3/12/12)
- 28-01-08 Calculation of Custody Time Credit (Amended 9/11/12)
- 28-03-01 Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)
- 28-03-02 Release on Parole (Amended 12/16/11)
- 28-04-01 Furlough Verifications (Amended 7/11/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 28, 2017 at 2 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of offenders on probation and parole.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.075, 439.3107, 439.3108, 439.3406(6), 439.470, and 439.562.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures relating to supervision of offenders on probation and

parole and other types of supervised release.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establishes policies and procedures relating to supervision of offenders and provides direction and information to Probation and Parole employees in the supervision of offenders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment updates policies and procedures for the Division of Probation and Parole and addresses statute revisions in the last legislative session.

(b) The necessity of the amendment to this administrative regulation: To update policies and procedures and address statute revisions from the last legislative session for offenders on supervision for which regulations are required by the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates policy and procedures relating to supervision of offenders. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation and Parole.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders updated policies and procedures to comply with statutory changes and improve operations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 860 Kentucky Department of Corrections Division of Probation and Parole employees, 46,481 offenders, and 120 Circuit Courts and the Parole Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Department of Corrections staff will have to learn the updates in the policies and procedures. The Department will provide routine training to staff. Offenders will have to abide by revised policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change the cost for the offenders or other organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with statutory changes is required. Offenders, who are eligible, will benefit from legislative changes that allow for them to obtain supervised compliance credit if compliant. Offenders will benefit from efficient probation and parole supervision, more streamlined supervision processes, and focused intervention strategies. The Division of Probation and Parole will allocate resources to supervision services and programs according to nationally recognized evidence based practices.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Due to changes needed in the Kentucky Offender Management System, the cost is estimated to be approximately \$285,000.

(a) Initially: The amendment to the regulation updates supervision practices but does not add costs beyond what is budgeted to the Department of Corrections. The Department continues to staff as funding levels allow.

(b) On a continuing basis: The amendment to the regulation updates supervision practices but does not add costs beyond what is budgeted to the Department of Corrections. The Department continues to staff as funding levels allow.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders. This regulation also sets fees for drug testing required for offenders on supervision. No increase in fees has been made in this amendment.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operations of the Kentucky Department of Corrections, 120 Circuit Courts, and the Parole Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.037, 196.070, 196.075, 197.045, 439.310, 439.3106, 439.3107, 439.3108, 439.3406, 439.346, 439.348, 439.430, 439.470, 439.480, 439.551, 439.552, 439.561, 439.563, 532.050, 532.220, 533.020, 533.030, 533.050, 533.250, 533.256.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$150,000-200,000 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In CY 2016, the Division collected over \$819,000 in drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds. This amendment does not affect revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated that the amount collected will be similar for subsequent years. This amendment does not affect revenue. This amendment will allow for eligible parolees to be released from supervision earlier due to supervised compliance credit; however, with the growing population, the increased use of discretionary detention, and immediate releases, it is estimated that revenue will not be affected by this amendment.

(c) How much will it cost to administer this program for the first year? For changes to the Offender Management System it is estimated to cost around \$285,000.

(d) How much will it cost to administer this program for subsequent years? The Department continues to staff as funding levels allow.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
803 KAR 2:425E**

This emergency administrative regulation amends 803 KAR 2:425 to align the deadline for the construction industry in the Commonwealth to comply with the final rule on Occupational Exposure to Crystalline Silica in Construction, which was published in the Federal Register on March 25, 2016 and codified in 29 C.F.R. 1926.1153, with the compliance deadline established by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"). In accordance with 29 C.F.R. Parts 1952 and 1953, Kentucky adopted the final rule in 803 KAR 2:425. As initially adopted, the final rule on Occupational Exposure to Crystalline Silica in Construction became effective on June 23, 2017. On April 6, 2017, OSHA announced that it was delaying enforcement of the Occupational Exposure to Crystalline Silica in Construction until September 23, 2017. In delaying enforcement of the final rule, OSHA noted that "the construction standard for crystalline silica has a number of unique features warranting additional guidance materials." Therefore, OSHA concluded, a delay in enforcement "is needed to provide the opportunity to conduct additional outreach to the regulated community and to provide additional time to train compliance officers." OSHA has advised that it is developing educational materials for employers and enforcement guidance for compliance staff. The administrative regulation is being filed as an emergency administrative regulation because the unavailability of adequate guidance to the regulated community and to compliance officers is an imminent threat to public welfare. An ordinary administrative regulation is not sufficient due to the current deadline for compliance with the final rule. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DERRICK K. RAMSEY, Chairman

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Health and Safety Compliance
Division of Occupational Safety and Health Education and
Training
(Emergency Amendment)**

803 KAR 2:425E. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1153
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
EFFECTIVE: June 26, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1153 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, or as provided under Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records

Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1153, revised as of July 1, 2016; and

(2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5.

Section 3. (1) The provisions of 29 C.F.R. 1926.1153 shall not be in effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of the standard.

(2) The construction industry shall comply with mineral dusts table for silica exposure in Appendix A to 29 C.F.R. 1926.55, as adopted in 803 KAR 2:403, until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of 29 C.F.R. 1926.1153.

DERRICK K. RAMSEY, Chairman

APPROVED BY AGENCY: June 26, 2017

FILED WITH LRC: June 26, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 31, 2017 at 9:00 a.m. in the Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael G. Swansburg, General Counsel, Labor Cabinet, 1047 U.S. Highway 127 South Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3281, fax (502) 564-5484; and Brittany Thomas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1101 to 1926.1153, except as modified or provided in Section 1 or Section 3. Section 2 also updates the C.F.R. to July 2016 and establishes the amendments to Subpart Z, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. On April 6, 2017, OSHA announced that because the "construction standard for crystalline silica has a number of unique features warranting development of additional guidance materials," it had decided to delay enforcement of 29 C.F.R. 1926.1153 until September 23, 2017, "in order to provide the opportunity to conduct additional outreach to the regulated community and to provide additional time to train compliance officers." Section 3, therefore, provides that 29 C.F.R. 1926.1153 shall not take effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins to enforce the standard. Section 3(2) requires the construction industry to continue to comply with the exposure limits for silica that were in effect before the adoption of 29 C.F.R. 1926.1153 until enforcement of the new standards begins.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be as least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. 1926.1101 to 1926.1153, thereby ensuring that the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment aligns the deadline for the construction industry to comply with new requirements pertaining to exposure to crystalline silica, as set forth in 29 C.F.R. 1926.1153, with the compliance deadline established by the federal government.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the announcement from OSHA that additional time is needed to conduct outreach to the regulated community and to train compliance officers. The amendment ensures that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with federal compliance deadlines and ensures that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. Specifically, KRS 338.051 authorizes the Chairman of the Occupational Safety and Health Standards Board to adopt established federal standards if necessary to meet federal time requirements. As mentioned above, OSHA has delayed the enforcement of the final rule on silica exposure until September 23, 2017.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with the federal compliance deadline and will ensure that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Approximately 676,000 workplaces in the nation are expected to be affected by the final OSHA silica rule, which requires employers to implement engineering controls and work practices where employees are exposed to respirable crystalline silica. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training. Under the amendment to this administrative regulation, regulated entities will have until the compliance deadline established by OSHA to comply with the new standards set forth in 29 C.F.R. 1926.1153.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): According to OSHA, the annualized national cost of

the rule is about one billion dollars, with a net benefit of around 3.8 to 7.7 billion dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is expected to result from the final rule, due to the consistency with the federal requirement, providing a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to the OSH Program or the Commonwealth generally to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program or the Commonwealth generally to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state restricted funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 338.051, KRS 338.061, KRS 13A.190, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? OSHA expects the rule to result in an annual costs of approximately 1,500 dollars to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in an annual costs of approximately \$1,500 to the average workplace covered by the rule.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: No information was specific to local governments, but estimated expenditures of about 560 dollars was given for smaller firms affected by the regulations.

STATEMENT OF EMERGENCY 900 KAR 11:010E

This emergency administrative regulation is being promulgated to conform with 2017 Ky. Acts ch. 22 (KRS Chapter 216C), which requires a medical review panel process in Kentucky for all malpractice and malpractice-related claims not excluded by agreement pursuant to KRS 216C.030. Because KRS Chapter 216C becomes effective June 29, 2017, it is imperative that this administrative regulation be filed as an emergency administrative regulation in accordance with KRS 13A.190(1)(a)3. If this administrative regulation was not filed as an emergency administrative regulation, citizens would not be able to comply with KRS 216C.020 and the delay in waiting for an ordinary administrative regulation to become effective could negatively impact their malpractice and malpractice-related claims. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary Medical Review Panel Branch (New Emergency Administrative Regulation)

900 KAR 11:010E. Medical Review Panels.

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

EFFECTIVE: June 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the

framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

(a) Attorney notifies the cabinet that the application is withdrawn; or

(b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

(a) Are licensed by that agency;

(b) Are natural persons; and

(c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

(a) Name;

(b) Mailing address;

(c) Business address;

(d) Type of license; and

(e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

(a) May be filed on Form MRP-002; and

(b) Shall include:

1. The name and current mailing address, phone number, and if known, email address of each named party;

2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;

3. Identification of the claimant, including:

a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or

b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;

4. A description of the malpractice and malpractice-related claims against each named health care provider, including:

a. The nature of the patient's injury;

b. The appropriate standard of care with which each defendant

was expected to comply;

c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and

d. How this failure caused or contributed to the claimant's injury;

5. The date of the alleged occurrence of malpractice; and

6. The signature of the claimant or the claimant's counsel, if retained.

(2) Each proposed complaint shall be accompanied by a filing fee:

(a) In the amount of \$125, plus twelve (12) dollars for each defendant;

(b) In the form of a check or money order; and

(c) Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) The proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and

2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

(a) Of the date service on all defendants was completed; and

(b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via e-mail to mrp@ky.gov.

(b) A proposed complaint and the required filing fee shall not be submitted via email.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by

the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to:

1. Send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section 8(4)(b) of this administrative regulation, to provide the notifications required by KRS 216C.110(1) and (2), and to outline the schedule for submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section 8(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

a. Discuss the evidence;

b. Reach a decision; and

c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re Convening Panel, may be used by the panel chairperson to notify the parties that the panel plans to convene a hearing in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

1. Email addresses to use to submit evidence in electronic form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

(a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and

(b) May use Form MRP-018, Chairperson Letter to Panel re Evidence, as a template for the written notification required by paragraph (a) of this subsection.

Section 9. Panel Decision. (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section 10 of this administrative regulation to:

(a) Each party;

(b) Each medical review panel member; and

(c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 10. Payment for Panel Members and Chairperson. (1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to

receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section 9 of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4)(a) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

(i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and

(ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

1. From the date of the panel's report or the date of the settlement; and

2. At the current Kentucky post-judgment interest rate.

Section 11. Settlements or Withdrawals. (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(3)(a) If the settlement or withdrawal occurs after the chairperson

is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section 10(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

Section 12. Sample Form for Waiver of Medical Review Panel Process. (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", June 2017;

(b) Form MRP-002, "Proposed Complaint", June 2017;

(c) Form MRP-003, "Acknowledgement of Complaint Filing", June 2017;

(d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", June 2017;

(e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", June 2017;

(f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", June 2017;

(g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", June 2017;

(h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", June 2017;

(i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", June 2017;

(j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", June 2017;

(k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", June 2017;

(l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", June 2017;

(m) Form MRP-013, "Chairperson Letter to Party re Strike", June 2017;

(n) Form MRP-014, "Chairperson Letter to Panel Members re Selection to Serve", June 2017;

(o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;

(p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", June 2017;

(q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", June 2017;

(r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;

(s) Form MRP-019, "Chairperson Letter to Parties re Convening Panel", June 2017;

(t) Form MRP-020, "Administrative Subpoena", June 2017;

(u) Form MRP-021, "Oath for Panel Members", June 2017;

(v) Form MRP-022, "Panel Member's Opinion", June 2017;

(w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", June 2017;

(x) Form MRP-024, "Time and Expense Report for Panel Members", June 2017;

(y) Form MRP-025, "Time and Expense Report for Chairperson", June 2017;

(z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", June 2017;

(aa) Form MRP-027, "Notification of Settlement or Withdrawal", June 2017; and

(bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at <http://mrp.ky.gov>.

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 19, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, Deputy General Counsel, (502) 564-7905, ext. 3439, molly.lewis@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions and requirements regarding medical review panels and establishing the fee required by KRS 216C.040(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the required fee and incorporating by reference standard forms for the cabinet and medical review panel chairpersons to use throughout the medical review panel process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky, attorneys who wish to serve as medical review panel chairpersons, and licensed health

care providers who will be potential defendants or medical review panel members. However, because this is a new process created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), it is not possible to provide the number of individuals affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with KRS Chapter 216C, anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky needs to use the medical review panel process (or specifically waive that process as permitted by KRS 216C.030). This administrative regulation establishes the process for attorneys to apply to be a panel chairperson and the various forms needed for uniform administration of medical review panels in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 216C.040 requires payment of a filing fee established by the Cabinet for Health and Family Services. That fee is established by this administrative regulation in the amount of \$125, plus \$12 for each defendant, in the form of a check or money order, payable to the Kentucky State Treasurer. Additional costs are specifically established by KRS Chapter 216C, not this administrative regulation, and include a \$25 fee if the parties desire the cabinet to select a panel chairperson (KRS 216C.070(2)), and the fees and reasonable travel expenses for medical review panel members and the chairperson (KRS 216C.220).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is compliance with KRS Chapter 216C, which established the medical review panel process for Kentucky to review proposed malpractice complaints against health care providers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Initial costs will be borne by the CHFS Secretary's Office through utilization of current personnel and assets.

(b) On a continuing basis: As the program grows, continuing costs will be partially reimbursed by user fees and partially by the CHFS Secretary's office. Independent funding may be sought from the FY 18/19 budget through the 2018 legislative session. Anticipated costs are personnel costs for two full time administrative support personnel and one half of one supervisory attorney.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Until separate budgetary authority is achieved, costs will be borne in part by user fees and in part by the CHFS Secretary's office funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Because this is a new program just created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), the filing fee established in this administrative regulation is a new fee, specifically required by KRS 216C.040(3).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. Because this is a new program just created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), the filing fee established in this administrative regulation is a new fee, specifically required by KRS 216C.040(3).

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, various licensing agencies of health care providers, and the Judicial Branch.

2. Identify each state or federal regulation that requires or

authorizes the action taken by the administrative regulation. KRS 194A.050(1), 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? KRS 216C.040 requires payment of a filing fee established by the Cabinet for Health and Family Services. That fee is established by this administrative regulation in the amount of \$125, plus \$12 for each defendant, in the form of a check or money order, payable to the Kentucky State Treasurer. The other revenue for the cabinet is a \$25 fee if the parties desire the cabinet to select a panel chairperson (established by KRS 216C.070(2)). However, because this is a new process created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), it is not possible to provide the number of individuals who will be filing complaints with the cabinet to initiate the medical review panel process or the number of parties who will request the cabinet to select a panel chairperson. Thus, it is not known how much revenue this administrative regulation will generate for the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Please see the detailed answer to subpart (a).

(c) How much will it cost to administer this program for the first year? Initial costs will be borne by the CHFS Secretary's Office through utilization of current personnel and assets.

(d) How much will it cost to administer this program for subsequent years? As the program grows, continuing costs will be partially reimbursed by user fees and partially by the CHFS Secretary's office. Independent funding may be sought from the FY 18/19 budget through the 2018 legislative session. Anticipated costs are personnel costs for two full time administrative support personnel and one half of one supervisory attorney.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 902 KAR 20:360E

KRS 216B.0431 requires the Cabinet for Health and Family Services to promulgate administrative regulations providing licensure standards and procedures for abortion facilities. KRS 216B.0435 requires abortion facilities to enter into a written agreement with a licensed acute-care hospital and a local ambulance service for the transport and treatment of a patient with unforeseen complications related to an abortion facility procedure. This emergency action is necessary to establish standards for effective transfer and transport agreements that serve to minimize risks associated with an emergent situation through the use of carefully designed protocols focused on maximizing the efficiency of the patient's transfer. This action must be implemented on an emergency basis in accordance with KRS 13A.190(1)(a) to avoid an imminent threat to public health and safety. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)

902 KAR 20:360E. Abortion facilities.

RELATES TO: KRS Chapter 13B, 15.241, 213.101, 216B.010-216B.130, 216B.990, 311.710-311.830, 314.011(8), 314.042(8), Chapter 333, 29 C.F.R. 1910.1030, 40 C.F.R. Part 403, 42 C.F.R. Part 493

STATUTORY AUTHORITY: KRS 216B.0431

EFFECTIVE: June 16, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.0431 requires that the Cabinet for Health and Family Services regulate abortion facilities. This administrative regulation establishes the licensure requirements for abortion facilities.

Section 1. Definitions. (1) "Abortion" is defined by~~[in]~~ KRS 311.720(1).

(2) "Abortion facility" is defined by~~[in]~~ KRS 216B.015(1).

(3) "Cabinet" is defined by KRS 216B.015(6)~~[means the Cabinet for Health Services]~~.

(4) "Volunteer" means a person who is not an employee of the abortion facility, but~~[and who]~~ has direct patient health care responsibilities performed within the abortion facility, and excludes any individual whose only duties include ushering patients into the facility [escort services].

Section 2. Licenses. (1) A license to operate an abortion facility shall not be required for a health facility licensed in accordance with ~~[to perform the services regulated by]~~ 902 KAR 20:016 or 902 KAR 20:106.

(2) A Kentucky-licensed acute-care hospital or ambulatory surgical center~~[That health facility]~~ shall:

(a) Comply with the requirements of its respective licensure category and provide written notice of its intent to perform abortions to the Office of Inspector General, Division of Health Care~~[Licensing and Regulation]~~, 275 East Main Street, Frankfort, Kentucky 40621;

(b) Comply with the reporting requirements of KRS 216B.0431; and

(c) Be exempt from any other licensure requirements of this administrative regulation.

(3) An abortion facility~~[(2) The]~~ license required by KRS 216B.0431 shall be conspicuously posted in a public area of the facility.

(4)~~[(3)]~~ An applicant for licensure shall file with the Office of the Inspector General, Division of Health Care~~[Licensing and Regulation]~~, 275 East Main Street, Frankfort, Kentucky 40621, an Application for License to Operate an Abortion Facility.

(5)~~[(4)]~~ An applicant for a license shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable federal and state laws and administrative regulations relating to an abortion facility and the requirements established in this subsection~~[:]~~

(a) Compliance with licensure administrative regulations shall be ascertained through an on-site inspection of the facility. A licensure inspection may be unannounced.

(b) A representative of the Office of Inspector General~~[inspecting agency]~~ shall have access to the facility during the hours that the facility operates.

(c) A regulatory violation identified during an inspection shall be transmitted in writing to the facility by the Office of Inspector General ~~[inspecting agency]~~.

(d) The facility shall submit a written plan for the elimination or correction of the regulatory violation to the Office of Inspector General~~[inspecting agency]~~ within ten (10) calendar days.

1. The plan shall specify the date by which each violation shall be corrected.

2. Following a review of the plan, the Office of Inspector General ~~[inspecting agency]~~ shall notify the facility in writing of the acceptability of the plan.

3. If a portion or all of the plan is unacceptable:

a. The Office of Inspector General~~[inspecting agency]~~ shall specify the reasons for the unacceptability; and

b. The facility shall modify or amend the plan and resubmit it to the Office of Inspector General~~[inspecting agency]~~ within ten (10) calendar days.

(6)~~[(5)]~~ A licensee shall, as a condition of licensure or relicensure, be in compliance with the reporting requirements of KRS 213.101.

(7)~~[(6)]~~ An unannounced inspection shall be conducted:

(a) On a complaint allegation; and

(b) Utilizing the procedures established in subsection (5)~~[(3)]~~ of this section.

(8)~~[(7)]~~ A license shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(9)~~[(8)]~~ A license shall be renewed upon payment of the prescribed fee and compliance with the licensure administrative regulations.

(10)~~[(9)]~~ Each license to operate shall be issued for the person or entity~~[persons]~~ and premises named in the application.

(11)~~[(10)]~~ A new application shall be filed if there is~~[in the event of]~~ change of ownership as established by 902 KAR 20:008, Section 2(16).

(a) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period.

(b) An additional fee shall not be charged for the remainder of the licensure period.

Section 3. Fee Schedule. (1) Annual fees. The annual licensure fee (including a renewal) for abortion facilities shall be \$155 for each licensed facility.

(2) Fees shall be paid by check made payable to Kentucky State Treasurer and sent to Cabinet for Health and Family Services, Division of Health Care~~[Licensing and Regulation]~~, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

Section 4. Appeals. (1) Notice of the denial, suspension, or revocation of a license, or application for a provisional license, or denial or rescission of a request for extension as set forth in Section 10(5) of this administrative regulation shall be made pursuant to the provisions of KRS Chapter 13B.

(2) A licensee may appeal the denial, suspension, or revocation of the facility's~~[his]~~ license or its application for a provisional license to the Secretary of the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) A hearing on the denial, suspension, or revocation of a license shall be conducted pursuant to the provisions of KRS Chapter 13B.

Section 5. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the abortion facility and for compliance with federal, state, and local laws and regulations pertaining to the operation of the abortion facility.

(b) The licensee shall establish written policies for the administration and operation of the abortion facility.

(c) The licensee shall establish lines of authority and designate the staff person who shall be principally responsible for the daily operation of the abortion facility.

(2) Policies.

(a) Administrative policies. The abortion facility shall have written administrative policies covering all aspects of the operation, including:

1. A description of organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the program;

5. A description of the administrative and patient care records and reports;

6. Procedures to be followed in the storage, handling, and administration of drugs and biologicals;[and]

7. A policy to specify the provision of emergency medical services; and[.]

8. Procedures to be followed in obtaining the voluntary and informed written consent of the pregnant woman[.] as required by KRS 311.725 prior to performing an obstetric ultrasound in accordance with KRS 311.727.

(b) Patient rights policies. The abortion facility shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of a procedure for handling patient grievances;[.]

2. Is informed of services available at the abortion facility and of related charges, including any charges not covered under third-party payor arrangements;[.]

3. Is informed of her medical condition, unless medically contraindicated (as documented in her medical record), and is afforded the opportunity to participate in the planning of her medical treatment and to refuse to participate in experimental research;[.]

4. Is encouraged and assisted to understand and exercise her patient rights;[.] To this end, she may voice grievances and recommend changes in policies and services. Upon the patient's request, the grievances and recommendations shall[will] be conveyed within a reasonable time to an appropriate decision making level within the organization that[which] has authority to take corrective action;[.]

5. Is assured confidential treatment of her records and is afforded the opportunity to approve or refuse the[their] release of her records to any individual not involved in her care, except as required by Kentucky law or third-party payment contract; and[.]

6. Is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in the care of her personal health needs.

(3) Personnel.

(a) A facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.

1. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.

2. Prior to performing job duties, all employees and volunteers who have direct patient contact within the abortion facility[.] shall have tuberculin[skin] testing conducted in accordance with 902 KAR 20:205.

3.[unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux) method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees or volunteers who have no documentation of a negative PPD result during the preceding twelve (12) months, then the two (2) step procedure (one (1) PPD test with negative result followed one (1) to three (3) weeks later by another PPD test) is required to establish a reliable baseline. If employees or volunteers have complete documentation of a negative PPD during the preceding twelve (12) months (may be a single PPD or a two (2) step PPD), then a single PPD is acceptable to establish the baseline for current employment.

a. A person with negative tuberculin skin tests who has direct contact with patients shall have an annual tuberculin skin test.

b. An initial or routine chest x-ray shall not be required for an employee or volunteer with negative tuberculin test results who is asymptomatic.

c. Personnel with a positive reaction to the skin test shall have no patient contact until certified noncontagious by a physician.

d. A chest x-ray shall be required to determine whether TB disease is present for an employee or volunteer:

(i) With reactions of 10mm and over to the preemployment tuberculin test;

(ii) Who has previously documented positive reactions;

(iii) With newly converted skin tests; and

(iv) With symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.)

e. If TB disease is diagnosed, appropriate treatment shall be given and patient contacts examined.

f. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and shall not be allowed to return to work until they have been certified noncontagious by the physician.

g. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees or volunteers who have patient contact, unless specifically contraindicated.

(i) An employee or volunteer who completes treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless he has symptoms of TB.

(ii) Positive reactors who are unable or unwilling to take preventive treatment shall not receive an annual chest x-ray. These individuals shall be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.

h. Postexposure skin tests shall be provided for tuberculin negative employees or volunteers within twelve (12) weeks after termination of contact for any suspected exposure to a documented case of pulmonary TB. i. A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

4.[3.] All professional and allied health professional staff members shall be currently certified with American Red Cross,[or] American Heart Association, or an equivalent nationally recognized organization to perform cardiopulmonary resuscitation and capable of recognizing symptoms of distress.

5. An[4. No] employee or volunteer of the facility while afflicted with any infected wounds, boils, sores, or an acute respiratory infection[.] or any other contagious disease or illness[.] shall not work in any capacity in which there is a likelihood of that[such] person transmitting disease to other individuals.

6.[5.] Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, including:

a.[to include] Fire safety and other safety measures;

b.[.] Medical emergencies;

c.[, and] Infection control; and

d. Confidentiality of patient information and records.

7. [6.] In-service training programs shall be planned and provided for all employees and volunteers to ensure and maintain their understanding of their duties and responsibilities.

8. Records shall be maintained to reflect in-service training program content and individual attendance.

9. The following training shall be provided at least annually:

a. Infection control, to include as a minimum;

(i)[.] Universal precautions against blood-borne diseases;

(ii)[.] General sanitation; and

(iii)[.] Personal hygiene such as hand washing, use of masks and gloves, and instruction to staff if there is a likelihood of transmitting a disease to patients or other staff members;

b. Fire protection, including:

(i) [to include] Evacuating patients;

(ii)[.] Proper use of fire extinguishers;[.] and

(iii) Procedures for reporting fires;

c. Confidentiality of patient information and records, and protecting patient rights; and

d. Licensing regulations.

10.[7.] Job descriptions.

a. Written job descriptions that adequately describe the duties of every position shall be maintained.

b. Each job description shall include:

(i) Position title;

(ii)[.] Authority;

(iii)[.] Specific responsibilities; and

(iv) Minimum qualifications.

c. Job descriptions shall be:

- (i) Reviewed at least annually;
- (ii) Kept current; and
- (iii) Given to each employee and volunteer ~~when~~ assigned to the position, including any ~~and when~~ revised job descriptions.

11. ~~8.~~ A personnel file shall be maintained for each employee and for each volunteer as follows:

- a. The records shall be:
 - (i) Completely and accurately documented; and
 - (ii) Readily available ~~and~~ and systematically organized to facilitate the compilation and retrieval of information; and
- b. The file shall contain:
 - (i) A current job description that reflects the individual's responsibilities and work assignments; ~~and~~
 - (ii) Documentation of the individual's ~~person's~~ orientation, in-service education, appropriate licensure, if applicable, and TB ~~skin~~ testing.

(b) Clinical staff.

1. Physicians, nurses, and allied health professionals shall constitute the clinical staff.

2. The clinical staff shall meet at least quarterly to review and analyze their clinical experiences; ~~Minutes shall be maintained of the~~ such meetings.

3. Physicians.

a. Abortions shall be performed only by a physician who is:

- (i) Licensed to practice medicine in Kentucky; and
- (ii) ~~who is~~ Properly qualified by training and experience to perform pregnancy termination procedures.

b. A physician shall remain on the premises until all patients are discharged.

(c) Nursing.

1. Nursing care shall be under the supervision of a registered nurse currently licensed in Kentucky.

2. A registered nurse shall be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period, and until all patients leave the facility.

3. Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.

(d) Allied health professionals, working under appropriate direction and supervision, may be employed to work only within areas where their competency has been established.

Section 6. Patient Care. (1) An abortion facility ~~facilities~~ shall not serve patients whose needs exceed the resources or capabilities of the facility.

(2) The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, including the following ~~to include~~:

- (a) ~~(1)~~ Admission criteria;
- (b) ~~(2)~~ Physician and nurse responsibilities for the services offered;

(c) ~~(3)~~ Specific details regarding the preoperative procedures performed, to include history and physical examination, including:

- 1. Verification of pregnancy;
- 2. ~~Estimation of gestational age;~~
- 3. ~~Identification of any preexisting conditions or complications; and~~

4. An obstetric ultrasound as required by KRS 311.727;

(d) ~~(4)~~ The actual abortion procedure, to include the use of:

- 1. ~~(a)~~ IVs;
- 2. ~~(b)~~ Fluids;
- 3. ~~(c)~~ Analgesia or ~~anesthesia~~. General anesthesia shall be administered only by personnel acting within the limits of their statutory scope of practice; and

4. ~~(d)~~ Tissue examination and disposal;

(e) ~~(5)~~ Postprocedure care and recovery room procedures to include emergency care;

(f) ~~(6)~~ Provisions for the education of patient, family, and others, as appropriate in pre- and postprocedure care;

(g) ~~(7)~~ Plans for follow-up patient care after discharge from the facility;

(h) ~~(8)~~ Management and appropriate referral of high-risk

conditions;

(i) ~~(9)~~ Transfer of patients who, during the course of pregnancy termination, are determined to need care beyond that of the facility; and

(j) ~~(10)~~ Infection control and sanitation procedures, including ~~to include~~ duties and responsibilities of the infection control committee. The infection control committee ~~that~~ shall develop and implement ~~include the development and implementation of~~ specific patient care and administrative policies aimed at investigating, controlling, and preventing infections in the facility.

Section 7. Pharmaceutical Services. Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state, and local laws. (1) Emergency drugs; ~~Each facility shall maintain an emergency kit or stock supply of drugs and medicines for use in treating the emergency needs of patients in compliance with the requirements of this paragraph.~~

(a) Emergency kit or emergency drugs; ~~Each facility shall maintain an emergency kit or stock supply of drugs and medicines for use in treating the emergency needs of patients in compliance with the requirements of this paragraph.~~

1. The emergency ~~This~~ kit or stock supply of drugs and medicine shall be stored in such a manner as to prohibit its access by unauthorized personnel.

2. A listing of contents by drawer or shelf shall be placed on the cabinet or emergency cart to allow quick retrieval.

3. Contents shall correspond with the inventory list.

4. Drugs and equipment shall be available within the facility to treat, as a minimum, the following conditions:

- a. ~~(1)~~ Cardiac arrest;
- b. ~~(2)~~ Seizure;
- c. ~~(3)~~ Asthmatic attack;
- d. ~~(4)~~ Allergic reaction;
- e. ~~(5)~~ Narcotic toxicity;
- f. ~~(6)~~ Hypovolemic shock; or
- g. ~~(7)~~ Vasovagal shock.

(b) Drug Reference Sources. Each facility shall maintain reference sources for identifying and describing drugs and medicines.

(2) Administering drugs and medicines.

(a) Drugs and medicines shall not be administered to individual patients or to anyone within or outside the facility except by those authorized by law under orders of a physician or other ordering personnel acting within the limits of his or her ~~their~~ statutory scope of practice.

(b) The ~~Such~~ orders shall be in writing and signed personally by the physician or other personnel who prescribes the drug or medicine.

(3) Medicine storage.

(a) Medicines and drugs maintained in the facility for daily administration shall not be expired and shall be properly stored and safeguarded in enclosures of sufficient size that are not accessible to unauthorized persons.

(b) Refrigerators used for storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications.

(c) A thermometer accurate to \pm three (3) degrees Fahrenheit shall be maintained in these refrigerators.

(d) Only authorized personnel shall have access to storage enclosures.

(e) Controlled substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws.

(4) Medicine preparation area.

(a) Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink.

(b) This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.

(5) Records. Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered.

(6) Poisonous substances. All poisonous substances shall be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration.

Section 8. Laboratory Services. (1) Laboratory services shall

be provided on site or through arrangement with a laboratory certified to provide the required procedures under 42 C.F.R. Part[CFR] 493.

(a) Facilities for collecting specimens shall be available on site.

(b) If laboratory services are provided on site, the services[they] shall be:

1. Directed by a person who qualifies as a director under KRS 333.090 and 42 C.F.R.[CFR] Part 493; and

2.~~[shall be]~~ Performed in compliance with KRS Chapter 333 and 42 C.F.R. Part[CFR] 493 standards.

(2) Prior to the procedure, laboratory tests shall include a recognized urine pregnancy test unless the physician identifies fetal heart beats or fetal movements on physical examination. If positive, the following additional tests shall be[are] required:

(a) Urinalysis including albumin and glucose examination;

(b) Hematocrit or hemoglobin; and

(c) Determination of Rh factor with appropriate medical intervention.

(3)(a) Aspirated tissues shall be examined to verify that villi or fetal parts are present.

(b)~~[:]~~ If villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.

(4) A written report of each laboratory test and examination shall be a part of the patient's record.

(5) If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she shall be administered fluids and transported immediately to a Kentucky-licensed[an] acute care hospital.

(6) All laboratory supplies shall be monitored for expiration dates, if applicable.

Section 9. Medical Waste Disposal. (1) Sharp wastes.

(a) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(b) A needle or other contaminated sharp[Needles] shall not be recapped, purposely bent,[or] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container[The containers of sharp wastes] shall~~[either]~~ be incinerated on or off site, or be rendered nonhazardous.

(2) Disposable waste.

(a) All disposable waste shall be:

1. Placed in a suitable bag[bags] or closed container~~[containers]~~ so as to prevent leakage or spillage~~[:]~~ and

2. ~~[shall be]~~ Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b) The abortion facility shall establish specific written policies regarding handling and disposal of waste material[all-wastes].

(c) Pathological waste, such as tissues, organs, body parts, and bodily fluids, shall be incinerated.

(d) Blood, blood specimens, used blood tubes, or blood products[The following wastes] shall be:

1. Disposed of by incineration;

2.~~[-or be]~~ Autoclaved before disposal~~[:]~~ or

3.~~[be]~~ Carefully poured down a drain connected to sanitary sewer, subject to limitations in paragraph (e) of this subsection[: blood, blood specimens, used blood tubes, or blood products].

(e) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. 403 and relevant local ordinances[administrative regulations].

(f) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:023 or 401 KAR 61:013.

Section 10. Emergency Care. (1) As required by KRS 216B.0435, an abortion facility shall enter into a written agreement [agreements] with a Kentucky-licensed acute-care hospital and a local, Kentucky-licensed Class I ambulance service for the

transport and treatment of a patient with unforeseen complications related to an abortion facility procedure[patients when hospitalization becomes necessary, as required by KRS 216B.0435].

(2) Each[These] written agreement[agreements] shall be filed with the cabinet pursuant to KRS 216B.0435(4) within ten (10) calendar days of finalization.

(3) A transfer agreement between the abortion facility and a Kentucky-licensed acute-care hospital shall:

(a) Be with a hospital located:

1. In the same county as the abortion facility; or

2. No further than twenty (20) minutes normal driving time from the abortion facility;

(b) Be a legally binding contractual document;

(c) Be signed by individuals authorized to execute the agreement on behalf of the abortion facility and hospital, who shall certify they have such authority;

(d) Require transfer of a patient if deemed medically necessary by the physician attending to the patient;

(e) Identify responsibilities of the abortion facility in which the abortion facility shall, at a minimum:

1. At the time of transfer, provide the hospital with complete and accurate information regarding the patient being transferred to the hospital;

2. Notify the hospital of the impending transfer of a patient and receive confirmation of the availability of appropriate facilities, services, and staff necessary for the care of the patient;

3. At the time of transfer, provide the hospital with copies of relevant portions of the patient's clinical record;

4. Transfer with the patient, the patient's medical records, demographic information, insurance information, and other information deemed necessary or otherwise required by law to facilitate the provision of medical care when the patient arrives at the hospital; and

5. Arrange for the immediate transfer of the patient's personal effects, including a document listing of the effects; and

(f) Identify responsibilities of the hospital in which the hospital shall, at a minimum:

1. Provide prompt and appropriate evaluation and treatment of a patient transferred to the hospital pursuant to the transfer agreement;

2. Accept responsibility for the patient's care when the patient is received by the hospital;

3. Direct charges performed by the hospital to the patient or patient's third-party payer; and

4. Acknowledge receipt of the patient's personal effects in writing signed by an authorized representative of the hospital and deliver the receipt to the abortion facility.

(4) A transport agreement between the abortion facility and a Kentucky-licensed Class I ambulance service capable of responding immediately to a call for emergency transport shall:

(a) Be with an ambulance service located:

1. In the same county as the abortion facility; or

2. No further than five (5) miles or ten (10) minutes normal driving time from the abortion facility;

(b) Be signed by individuals authorized to execute the agreement on behalf of the abortion facility and ambulance service, who shall certify they have such authority; and

(c) Identify responsibilities of the ambulance service in which the ambulance service shall agree, at a minimum to:

1. Provide services in accordance with all federal and state laws and administrative regulations applicable to emergency service entities;

2. Employ sufficient staff, including paramedics and emergency medical technicians, to provide patient care and operate vehicles and equipment in accordance with industry standards and applicable laws and administrative regulations;

3. Require all responding medical personnel to familiarize themselves with the floor plan of the abortion facility to minimize the time required to locate the patient in the facility and exit the facility with the patient as expeditiously as possible;

4. Acknowledge the existence of, and its familiarity with the terms of, the transfer agreement between the abortion facility and

an acute care hospital; and

5. Transport the patient to the hospital that is party to the transfer agreement, unless otherwise directed by the patient.

(5) A licensed abortion facility applying for a renewal license or an applicant for a provisional license may submit a request in writing for extensions of time to comply with the transfer or transport agreement requirements to the cabinet's Office of Inspector General in accordance with the provisions of this subsection.

(a) Any request shall:

1. Be in writing;

2. Contain a certification under oath that the party seeking the extension of time has exhausted all reasonable efforts to obtain a transfer or transport agreement for a continuous ninety (90) calendar day period prior to the request; and

3. Contain a detailed description of the efforts taken to secure the agreements.

(b) In deciding to grant or deny the request for an extension of time, the inspector general shall consider all factors the inspector general deems relevant under the circumstances, but at least the following factors:

1. Whether the abortion facility or applicant made, and continues to make, a good faith effort to obtain a transfer or transport agreement;

2. Whether the abortion facility or applicant can provide the same level of patient care and safety via alternative health services during any extension period; and

3. Regulatory compliance history at the abortion facility and at any other health care facility owned, in whole or in part, by the applicant or any other individual or entity having an ownership interest with the facility.

(c) If the request is granted, the extension of time shall be effective for a time-period of ninety (90) calendar days from the date of issuance.

(d) If the request is granted for a transfer agreement, the transport agreement need not comply with subsection (4)(c)4. and 5. of this section for the duration of the extension of time.

(e) The inspector general may rescind a previously granted extension of time at any time upon determining that the applicant or abortion facility has not met, or is not meeting, the conditions of paragraph (b) of this subsection.

(f) If a request for an extension is denied, an applicant or licensee shall have ten (10) calendar days to submit a written request for reconsideration to the inspector general, whose decision shall be final. The licensee or applicant for provisional license may appeal a denial in accordance with Section 4 of this administrative regulation.

Section 11. Equipment and Supplies. There shall be appropriate equipment and supplies maintained for the patients to include:

(1) A bed or recliner suitable for recovery;

(2) Oxygen with flow meters and masks or equivalent;

(3) Mechanical suction;

(4) Resuscitation equipment to include resuscitation bags and oral airways;

(5) Emergency medications, intravenous fluids, and related supplies and equipment;

(6) A clock with a sweep second hand;

(7) Sterile suturing equipment and supplies;

(8) Adjustable examination light;

(9) Containers for soiled linen and waste materials with covers;

(10) Refrigerator; and

(11) Appropriate equipment for the administering of general anesthesia, if applicable.

Section 12. Consultation. Arrangements shall be made for consultation or referral services to be available as needed.

Section 13. Quality Improvement. (1)The facility shall establish and implement a written plan for a quality improvement program for patient care that shall:

(a)[- The plan shall] Specify the individual responsible for

coordinating the quality improvement program; and

(b) [shall] Provide for ongoing monitoring of staff and patient care services.

(2) There shall be an ongoing process for monitoring and evaluating the following:

(a) Patient care services;

(b)[-] Staffing;

(c)[-] Infection prevention and control;

(d)[-] Housekeeping;

(e)[-] Sanitation;

(f)[-] Safety;

(g)[-] Maintenance of physical plant and equipment;

(h)[-] Patient care statistics;[-] and

(i) Discharge planning services.

(3) Evaluation of patient care throughout the facility shall be criteria-based[-] so that certain actions shall be[are] taken or triggered if[when] specific quantified, predetermined levels of outcomes or potential problems are identified.

(4) The quality improvement process shall incorporate quarterly review of a minimum of five (5) percent of medical records of patients undergoing procedures during a given quarter, but not less than five (5) records shall be reviewed.

(5)(a) The quality improvement process shall include evaluation by patients of care and services provided by the facility.

(b) If the families of patients are involved in the care and services provided by the facility, the quality improvement process shall include a means for obtaining input from families of patients.

(6) The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including as a minimum:

(a)[-] Policy revisions;

(b)[-] Procedural changes;

(c)[-] Educational activities;[-] and

(d) Follow-up on recommendations, which may include[or] that additional actions are no longer indicated or needed.

(7) The quality improvement program shall identify and establish indicators of quality care[-] specific to the facility[-] that shall be monitored and evaluated.

(8) The results of the quality improvement program shall:

(a) Be submitted to the licensee for review at least annually; and

(b)[shall] Include at least the deficiencies found and recommendations for corrections or improvements.

(9) Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

Section 14. Medical Records. (1) Medical records shall be maintained for all patients examined or treated in the abortion facility.

(2) The medical records shall be:

(a) Completely and accurately documented;[-]

(b) Readily available;[-] and

(c) Systematically organized to facilitate the compilation and retrieval of information.

(3) All information shall be centralized in the patient's medical record.

(4) All entries shall be legibly written or typed, dated, and signed.

(5)(a) The medical record shall include the following information:

(a)[-] A face sheet with patient identification data, including:

1.[to include:] Name;

2.[-] Address;

3.[-] Telephone number;

4.[-] Social Security number;

5.[-] Date of birth;[-] and

6. Name, address and telephone number of the person to be notified if[in the event of] an emergency occurs;

(b)[2-] Signed consent for the procedure;

(c)[3-] Date of initial examination;

(d)[4-] Date of abortion;

(e)[5-] Referring and attending physicians' names and phone numbers, if applicable;

(f)(6.) Complete medical history to include medications currently being taken;

(g)(7.) Physical examination, to the extent necessary to determine the health status of the patient, within fifteen (15) days of the procedure, including detail of findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period;

(h)(8.) Results of diagnostic tests and examinations, including:

1. ~~(e.g.,)~~ X-ray;
2. ~~(.)~~ Electrocardiography;
3. ~~(.)~~ Clinical laboratory;
4. ~~(.)~~ Pathology;
5. ~~(.)~~ Consultations; or
6. ~~(.)~~ Ultrasound;

(i)(9.) Preoperative diagnosis;

(j)(10.) Counselor's notes, if applicable;

(k)(11.) Physician's orders;

(l)(12.) Complete record of abortion procedure to include:

1. ~~(a.)~~ Vital signs, including ~~(i.e.,)~~ temperature, pulse, respiration, and blood pressure ~~(.)~~ prior to and following the procedure;

2. ~~(b.)~~ Name of procedure performed;

3. ~~(c.)~~ Anesthetic agent utilized;

4. ~~(d.)~~ Name of attending physician performing the procedure;

5. ~~(e.)~~ Names of clinical assistants in attendance, including:

~~a. to include~~ Other physicians;

~~b.)~~ Physician's assistants;

~~c.)~~ Anesthetists;

~~d.)~~ Nurses; ~~(.)~~ or

~~e. Specially-trained technicians; and~~

~~6. (f.)~~ Signature of physician performing the procedure;

~~(m)(-13.)~~ Nurses' notes;

(n)(14.) Progress notes to include a postanesthesia note if general anesthesia is utilized;

(o)(15.) Attending physician's description of gross appearance of tissue removed;

(p)(16.) Final diagnosis;

(q)(17.) Condition on discharge;

(r)(18.) Post-op orders and follow-up care; and

(s)(19.) Documented verification that the woman has received information and was offered printed materials as required by KRS 311.725.

(6)(b) The attending physician shall complete and sign the medical record within seventy-two (72) hours following discharge.

(7)(2) Confidentiality of all patient records shall be maintained at all times.

(8)(3) Transfer of records. The abortion facility shall:

(a) Establish systematic procedures to assist in continuity of care ~~if [where]~~ the patient moves to another source of care; ~~(.)~~ and

~~(b) [shall,] Upon proper release, transfer medical records or an abstract thereof if [when]~~ requested.

(9)(4) Retention of records. After patient's death or discharge, the complete medical record shall be placed in an inactive file and retained for six (6) [five (5)] years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 15. Infection Control. (1) There shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be:

(a) Established;

(b) ~~(.)~~ Reviewed at least annually; ~~(.)~~ and

(c) Revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among patients [residents] and personnel.

(4) The system shall include assignment of responsibility for:

(a) The ongoing collection and analysis of data; and

~~(b) [as well as for]~~ The implementation of required follow-up actions.

(5) Corrective actions shall be:

(a) Taken on the basis of records and reports of infections and

infection potentials among patients and personnel; and

~~(b) [shall be]~~ Documented.

(6) All new employees shall be instructed on:

~~(a) [in]~~ The importance of infection control and personal hygiene; and

~~(b) [in]~~ Their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

(8) Adequate space shall be provided for storage, maintenance, and distribution of sterile supplies and equipment.

(9) Sterile supplies and equipment shall:

~~(a)~~ Not be mixed with unsterile supplies;

~~(b) [and shall]~~ Be stored in dust-proof and moisture-free units; and

~~(c) [They shall]~~ Be properly labeled.

(10) Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials.

(11) The sterilizing equipment shall have approved control and safety features.

Section 16. Linen and Laundry. (1) An adequate supply of clean linen or disposable materials shall be maintained ~~[in order]~~ to ensure a change of linen on procedure tables between patients.

(2) Provisions for proper laundering of linen and washable goods shall be made.

(3) Soiled and clean linen shall be handled and stored separately.

(4) Storage shall be in covered containers.

~~(5) [(3)]~~ A sufficient supply of cloth or disposable towels shall be available so that a fresh towel is ~~[can be]~~ used after each hand washing.

(6) Towels shall not be shared.

Section 17. Housekeeping. (1) ~~[General. (a)]~~ A facility shall be kept neat, clean, and free from odors.

~~(2) [(b)]~~ Accumulated waste material shall be removed daily or more often if necessary.

~~(3) [(c)]~~ There shall be frequent cleaning of floors, walls, ceilings, woodwork, and windows.

~~(4) [(d)]~~ The premises shall be kept free from rodent and insect infestation.

~~(5) [(e)]~~ Bath and toilet facilities shall be maintained in a clean and sanitary condition at all times.

~~(6) [(2)]~~ Cleaning materials and supplies shall be stored in a safe manner.

(7) All harmful agents shall be locked in a closet or cabinet used for this purpose only.

Section 18. Refuse and Waste Disposal. (1) All garbage and waste shall be collected, stored, and disposed of in a manner designed to prevent the transmission of disease.

~~(2) [(a)]~~ Containers shall be washed and sanitized before being returned to work areas.

~~(3) [(and (b))]~~ Disposable type containers shall not be reused.

~~(4) [(2)]~~ Containers for garbage and refuse shall be:

~~(a)~~ Covered and stored outside; and

~~(b)~~ Placed on an approved platform to prevent:

1. Overturning by animals;

2. ~~(.)~~ The entrance of flies; or

3. The creation of a nuisance.

(5) All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect, or other vermin problem.

~~(6) [(3)]~~ Immediately after emptying, containers for garbage shall be cleaned.

~~(7) [(4)]~~ All medical waste shall be managed in accordance with Section 9 of this administrative regulation.

Section 19. Outside Areas. (1) All outside areas, grounds, and adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a:

(a) Fire hazard; or

(b)[as-a] Haven for insects, rodents, and other pests.

(2) Outside stairs, walkways, ramps, and porches shall be maintained free from accumulations of water, ice, snow, and other impediments.

Section 20. Disaster Preparedness. (1) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

(2) The plan shall be posted.

(3) Staff shall be trained in:

(a) Properly reporting a fire;

(b)[.] Extinguishing a small fire;

(c)[, and in] Evacuation from the building; and

(d) Procedures for fire safety, including[.] fire drills~~[shall be practiced in accordance with state fire administrative regulations].~~

(4)[(2)] All fire protection and alarm systems and other firefighting equipment shall be inspected and tested at least once each year, and more often if necessary to maintain them in serviceable condition.

Section 21. Facility Specifications. (1) An abortion facility shall provide a functionally safe and sanitary environment for patients, personnel, and the public.

(2) An abortion facility shall include space for the following functions:

(a) Reception and waiting;

(b) Administrative activities such as patient admission, record storage, and business affairs;

(c) Patient dressing and storage of personal items;

(d) Preoperative evaluation, including:

1. Physical examination;

2.[.] Laboratory testing[.] and

3. Preparation for anesthesia;

(e) Performance of surgical procedures;

(f) Preparation and sterilization of instruments;

(g) Storage of equipment, drugs, and fluids;

(h) Postanesthetic recovery; and

(i) Janitorial and utility support.

Section 22. Injunctive Relief. The Office of Inspector General shall refer instances where administrative penalties and legal sanctions have failed to prevent or cause a discontinuance of a violation of KRS Chapter 216B to the secretary of the cabinet for action in accordance with KRS 15.241.

Section 23. Incorporation by Reference. (1) Form OIG 240" [The] Application for License to Operate an Abortion Facility", June 2017~~[L&R 240, (7/98)]~~, is incorporated by reference.

(2) This material may be inspected, copied or obtained subject to applicable copyright law at the Office of Inspector General, Division of Health Care~~[Licensing and Regulation]~~, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 15, 2017

FILED WITH LRC: June 16, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Robert S. Silverthorn, Jr., Inspector General, Office of Inspector General, phone 502-564-2888, email robert.silverthorn@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for abortion facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.0431.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.0431 by establishing standards and procedures for abortion facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards and procedures for abortion facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by adding a cross-reference to the requirement established in KRS 311.727 for informed consent to be obtained prior to performing an obstetric ultrasound; removing the tuberculin skin testing requirements from this administrative regulation and replacing those requirements with a cross-reference to 902 KAR 20:205; permitting an equivalent nationally recognized organization (in addition to the American Red Cross or American Heart Association) to certify staff members to perform cardiopulmonary resuscitation; requiring each facility to include in its written orientation program the policies and procedures regarding confidentiality of patient information and records; requiring that employees and volunteers receive revised job descriptions; requiring that written patient care policies and procedures include specific details about an obstetric ultrasound as required by KRS 311.727; establishing standards for effective transfer and transport agreements that serve to minimize risks associated with an emergency situation through the use of carefully designed protocols focused on maximizing the efficiency of the patient's transfer; updating references to the agency to use the current names of the Cabinet for Health and Family Services, Office of Inspector General, and Division of Health Care; and making changes to comply with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The changes are needed to comply with 2017 Ky. Acts ch. 2 (enacted as KRS 311.727), as well as existing provisions in KRS 216B.0431 and 216B.0435

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.0431 by establishing standards and procedures for abortion facilities and complies with KRS 311.727 by requiring an obstetric ultrasound.

(d) How the amendment will assist in the effective administration of the statutes This administrative regulation assists in the effective administration of the statutes by amending standards and procedures for abortion facilities to comply with current law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as abortion facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: each facility will need to comply with the requirements of KRS 311.727 regarding the performance of an obstetric ultrasound; each facility may use an equivalent nationally recognized organization (in addition to the American Red Cross or American Heart Association) for certification of staff members to perform cardiopulmonary resuscitation; each facility will be required to include in its written orientation program the policies and procedures regarding confidentiality of patient information and records; each facility will be required to distribute revised job descriptions to employees and volunteers; each facility will need to include in its written patient care policies and procedures specific details about an obstetric ultrasound as required by KRS 311.727; and each facility will need to comply with the standards for effective transfer and transport agreements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be licensed by the cabinet and will be in compliance with state law.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as abortion facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.0431, 216B.0435

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 922 KAR 1:140E

In accordance with KRS 13A.190(1)(a)3, this emergency administrative regulation is necessary to have in force and effect policies and procedures coinciding with the effective date of the 2017 Ky. Acts ch. 10. The new law allows for the placement of children removed from their homes of origin by the cabinet with fictive kin. In addition, this emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to ensure adequate measures are in place to support the health, safety, and welfare of children receiving permanency services. An ordinary administrative regulation would not allow the agency sufficient time to have policies and procedures in place by the enactment date of the legislation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:140E. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 199.011(3)(2), (4), (9), 199.462, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020(7)(6), (8), 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

EFFECTIVE: June 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster

care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 199.011(3)(2) and 600.020(7)(6).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9)(8);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(6) "Fictive kin" is defined by KRS 199.011(9).

(7) "Parent" is defined by 42 U.S.C. 675(2).

(8)(7) "Reasonable efforts" is defined by KRS 620.020(11).

(9)(8) "Relative" means an individual related to a child by blood, marriage, or adoption[te a child].

(10)(9) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's home if:

(a) An emergency custody order has been obtained pursuant to KRS 620.060;

(b) A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(c).

(3) Upon removal of a child from the child's home, placement shall be:

(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

(b) Closest in proximity to the child's home, in accordance with KRS 199.801.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers; and

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist

in locating a parent or relative.

(6) If a relative or fictive kin placement is in the best interest of the child, the cabinet shall:

(a) Use an absent parent search to locate a relative;

(b) Discuss with the relative or fictive kin the option to pursue approval as a foster parent in accordance with 922 KAR 1:350 and document the relative's decision or fictive kin's decision in the case file using the Relative and Fictive Kin Caregiver Agreement.

1. A relative's decision or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

2. If a relative or fictive kin declines to pursue approval as a foster parent prior to accepting custody of a child, the relative or fictive kin shall not have another opportunity to pursue being a foster parent at a later time in the child's placement due to ineligibility under 42 U.S.C. 672.

(c) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abuse head trauma in accordance with KRS 199.462;

(d) Provide information to the relative and fictive kin on how to recognize and report child abuse and neglect;

(e) Conduct background checks on the relative or fictive kin[consistent with a caretaker relative] pursuant to 922 KAR 1:490; and

(f)(e) Complete a home evaluation with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12) applies;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110; and

(v) Unsupervised contact with the birth parent; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(7) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.

(8) A relative or fictive kin who accepts custody of a child removed from the child's home of origin by a court shall not be entitled to reimbursement in accordance with 922 KAR 1:350, Section 10.

(9) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the DPP-1281, Family Case Plan.

(10)(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(11)(9) Concurrent planning shall be considered:

(a) During development of the case permanency plan; and

(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child who has been removed from the child's home of origin by a court[in the custody of the cabinet] shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

- (b) Adoption;
- (c) Permanent relative placement;
- (d) Legal guardianship; or
- (e) Another planned permanent living arrangement[; ~~or~~
- (f) ~~Emancipation~~].

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court~~[in the custody of the cabinet]~~ is returned to the parent if the cabinet determines:

- (a) A family has made sufficient progress toward completing the case permanency plan; and
- (b) Return to the parent is in the best interest of the child.
- (2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:
 - (a) A change in the permanency goal;~~[or]~~
 - (b) Termination of parental rights; or
 - (c) A civil action in support of the child's permanency goal.
- (3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

- (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
- (b) The cabinet pursues involuntary termination of parental rights:
 - 1. Pursuant to KRS 625.090; or
 - 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).
- (2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:
 - (a) A relative or fictive kin placement has been secured;
 - (b) Termination is not in the best interest of the child, for a compelling reason:
 - 1. Documented in the case permanency plan; and
 - 2. Monitored on a continual basis; or
 - (c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.
- (3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court~~[in the custody of the cabinet]~~ shall be permanent custody~~[relative placement]~~ if:

- (1) Return to the parent is not in the child's best interest; and
- (2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child who has been removed from the child's home of origin by a court~~[in the custody of the cabinet]~~ shall be legal guardianship if the cabinet determines that:

- (a) Return to the parent or adoption is not in the child's best interest;
- (b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and
- (c) Legal guardianship by the adult identified in paragraph (b) of this subsection~~[(1)(b) of this section]~~ is in the child's best interest.
- (2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Another Planned Permanent Living Arrangement.

- (1) The permanency goal for a child in the custody of the cabinet

who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

- (a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;
- (b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
- (c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
- (d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
- (e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.
- (2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 10.~~[Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:~~

- ~~(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;~~
- ~~(b) The child is age sixteen (16) or older; and~~
- ~~(c) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.~~
- ~~(2) If emancipation is established as a permanency goal, the child shall be referred to an independent living program administered by the cabinet.~~

~~Section 11.] Permanency Services. (1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court~~[in the custody of the cabinet]~~ so that permanency is achieved.~~

- (2) Permanency services may include:
 - (a) Ongoing case work and monitoring of the family to:
 - 1. Maintain the child safely in the child's home; and
 - 2. Ensure safe return of the child if the goal is return to the parent;
 - (b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
 - (c) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;
 - (d) Post-adoption placement stabilization services as described in 922 KAR 1:530; or
 - (e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative or fictive kin placement may include:
 - 1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;
 - 2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;
 - 3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030;~~[or]~~
 - 4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available;~~or~~
 - 5. The Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 11~~[42]~~. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DPP-1281, Family Case Plan", 11/16; and
- (b) "Relative and Fictive Kin Caregiver Agreement", 7/17~~[is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov.; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for foster care and adoption permanency services that are mandated by federal and state laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements 2017 Ky. Acts ch. 10, which authorizes the placement of children removed from their homes with origin by the cabinet with fictive kin, and clarifies reimbursements for the child's care. Additionally, the amendment removes emancipation as a permanency goal for a child placed outside of the home of origin. According to the Court of Justice, emancipation is not a legally available permanency option for children due to a lack of statutory authority. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the 2017 Ky. Acts ch. 10, clarify reimbursement policies for children, and make corrections to the permanency services per inputs from the Court of Justice.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding fictive kin as a permanency option for children removed from their homes of origin by the cabinet, clarifying reimbursement policies for children, and making corrections per inputs from the Court of Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes through its conformity and alignment with state laws applicable to permanency services offered through the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 7, 2017, there were 8,375 children in foster care who are served by a variety of foster care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will allow fictive kin as a placement option for children who are removed from their homes of origin. The processes for fictive kin will be similar, though not identical, to the processes for relatives.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fictive kin will have the option of accepting a child for placement and pursuing approval as a foster/adoptive parent. There is no new or additional cost being forced upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow the cabinet to place children removed from their homes of origin with fictive kin, a caregiver with whom the child has a significant emotional bond. The ability to place with fictive kin will prevent some children from being placed in the custody of the cabinet and/or with a provider who is otherwise a stranger to the child. The use of fictive kin may also allow some children to remain in the children's communities and schools of origin. Fictive kin has been found as more stable and less traumatizing placement type for children removed from their homes of origin in other states.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial implementation costs to the administrating agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E (of the Social Security Act) funds, the federal Temporary Assistance for Needy Families Block Grant (TANF), the federal Social Services Block Grant (SSBG), restricted funds derived from Medicaid, and State General Funds are the funding sources for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.467, 620.180

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.467, 620.180, 45 C.F.R. 1355 - 1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

922 KAR 1:490E

In accordance with KRS 13A.190(1)(a)3, this emergency administrative regulation is necessary to have in force and effect policies and procedures coinciding with the effective date of the 2017 Ky. Acts ch. 10. The new law allows for the placement of children removed from their homes of origin by the cabinet with fictive kin. In addition, this emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to ensure adequate child safety measures, namely background checks on this new provider group. An ordinary administrative regulation would not allow the agency to implement the background check requirements on fictive kin to coincide with the effective date of the 2017 Ky. Acts ch. 10. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:490E. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 199.011(6), (9)[(7)], 199.462(1), 211.684, 600.020(28), (40), (61), (62)[(55), (56)], 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45

C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

EFFECTIVE: June 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs[program]. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household,[and] a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2) KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative, fictive kin, or kinship caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4)[(3)] "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative, fictive kin, or kinship caregiver; and

(b) Is eighteen (18) years of age or older.

(5)[(4)] "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Family Preparation; or

(b) 922 KAR 1:310, Standards for Child-Placing Agencies.

(6)[(5)] "Caretaker relative" means a relative~~[-(a)]~~ with whom the child is, or shall be, placed by the cabinet~~[-and]~~

~~(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130].~~

(7) [(6)] "Child fatality" is defined by KRS 211.684.

(8) "Child-placing agency" is defined by KRS 199.011(6) [(7)].

(9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10) [(7)] "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

(11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(12) [(8)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(13) [(9)] "Sexual abuse" is defined by KRS 600.020(60) [(55)].

(14) [(40)] "Sexual exploitation" is defined by KRS 600.020(61) [(56)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation [National Crime Information Database]; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. [(a)] Committed sexual abuse or sexual exploitation of a child;

2. [(b)] Been responsible for a child fatality or near fatality related to abuse or neglect;

3. [(c)] Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. [(d)] Had parental rights terminated; or

(b) A matter pending administrative review. An individual subject to administrative review in accordance with this paragraph may submit an open records request in accordance with 922 KAR 1:510.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

Section 3. Procedure for Requesting a Cabinet Child Abuse or

Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

(1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if [when] a:

(a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee [requirements] specified in 922 KAR 1:470 [Section 3(4)].

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin. (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) [and in accordance with 922 KAR 1:130], by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation [National Crime Information Database] if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet [in accordance with 922 KAR 1:130].

(3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.

(4) A caretaker relative or fictive kin shall not be approved if a [an in-state] criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

- (a) An adolescent member of the household has:
1. Been found by the cabinet to have abused or neglected a child; or
 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
- (b) An adult member of the household has:
1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:

- (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
- (b) A child abuse or neglect check conducted by the cabinet; and
- (c) An address check of the Sex Offender Registry.

(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (d) of this administrative regulation.

(b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(6) [(5)] If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2[(4)] or 7[(4)] of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

- (a) Applicant;
- (b) Foster or adoptive parent; and
- (c) Adult member of an applicant or foster or adoptive parent's household.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:

- (a) An applicant's household; or
- (b) A foster or adoptive parent's household.

(3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7[(4)] of this administrative regulation shall be maintained for each:

- (a) Caretaker relative;
- (b) Kinship caregiver; and

(c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

- (a) Caretaker relative; or
- (b) Kinship caregiver; or
- (c) Fictive kin.

Section 9. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", 7/17[~~edition 10/41~~]; and

(b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", 7/17[~~edition 10/41~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov.; and Tricia Orme,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, kinship caregivers, fictive kin, prospective foster/adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of background check requirements for out-of-home or foster care providers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds fictive kin to the out-of-home or foster care providers subject to background check requirements in accordance with 2017 Ky. Acts ch. 10. In addition, the amendment changes the criteria for a child abuse and neglect check conducted by the cabinet on a

prospective out-of-home or foster care provider by adding a near fatality related to child abuse or neglect. In addition, this amendment clarifies the cabinet's ability to communicate with child-placing agencies and authorizes the cabinet to release information about individuals pending administrative review, which includes being subject to matters still under investigation, assessment, or appeal. The amendment clarifies application of background check requirements on new household members and updates material incorporated by reference, including addressing audit findings from the Federal Bureau of Investigation (FBI). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement recently enacted legislation establishing fictive kin as a placement option for children removed by the cabinet from their homes of origin. In addition, the amendment is necessary to respond to Red Tape Reduction comments received from child-placing agencies or their representative to improve provision of information and timeliness. Lastly, the amendment is necessary to ensure compliance with FBI requirements for continued access to comprehensive criminal background information and to improve child safety in out-of-home or foster care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its necessary updates and corrections to background check requirements of caretaker relatives, kinship caregivers, fictive kin, and foster/adoptive parents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation impacts prospective and existing foster/adoptive parents, relative caregivers, kinship caregivers, and in the near term, fictive kin providers. In addition, child-placing agencies are impacted in their recruitment and approvals of foster/adoptive parents. From January to March 2017, the cabinet processed approximately 6,000 background checks on foster/adoptive parents, caretaker relatives, and kinship caregivers or their household members. As of May 7, 2017, there were 8,375 children in foster care.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions on the part of caretaker relatives, kinship caregivers, or foster/adoptive parents. Prior to 2017 Ky. Acts ch. 10, fictive kin were not a placement option. Under this administrative regulation, fictive kin will be added to the placement options utilized by the cabinet upon removal of a child from the child's home of origin and subject to background checks similar to a caretaker relative.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is no increase in costs resulting from this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this administrative regulation, children removed from their homes of origin will benefit from an additional placement option, fictive kin, and enhanced safety afforded through the background checks required by this administrative regulation. In addition, the state overall will benefit from continued access to the FBI criminal history records and

compliance with federal funding mandates.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no new or additional cost projected for the administrative body to implement this administrative regulation. To not effect this administrative regulation would result in threats to the state's child welfare funding.

(b) On a continuing basis: There is no new or additional cost projected for the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any fees, but rather, enforces the fees that law enforcement or judicial agencies charge to conduct criminal background checks. There is no increase in fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in item 4 of this analysis were added as additional safeguards for children in out-of-home or foster care. The federal law does not prohibit the addition of these restrictions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs for conducting the checks.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no new or additional costs projected as a result of this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no new or additional costs projected as a result of this regulatory amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 922 KAR 1:550E

In accordance with KRS 13A.190(1)(a)3, this emergency administrative regulation is necessary to have in force and effect policies and procedures coinciding with the effective date of the 2017 Ky. Acts ch. 11. The new law allows for a child in the custody of the cabinet to pursue an operator's permit and license by means other than the approval and signature of a parent or legal guardian. In addition, this emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to ensure adequate child safety measures, specifically the application of the reasonable and prudent parent standard in accordance with 2017 Ky. Acts ch. 11. An ordinary administrative regulation would not allow the agency to implement the policies and procedures to coincide with the effective date of the 2017 Ky. Acts ch. 11. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (New Emergency Administrative Regulation)

922 KAR 1:550E. Operator's license for children in the custody of the cabinet.

RELATES TO: KRS 186.450, 186.470, 186.480, 186.590, 199.011(3), (4), (15), 600.020(2), (52), 605.102, 42 U.S.C. 672, 675, 677

STATUTORY AUTHORITY: KRS 194A.050(1), 605.102(6)

EFFECTIVE: June 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its

programs. KRS 605.102 authorizes the cabinet to promulgate an administrative regulation to implement a process utilizing the reasonable and prudent parent standard, in conjunction with the child's caregiver, to: (1) verify that a child in the custody of the cabinet is age or developmentally appropriate to apply for an operator's license, motorcycle operator's license, intermediate license, or instruction permit, and (2) request cancellation of a child's operator's permit or license. This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license.

Section 1. Definitions. (1) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(2) "Cabinet" is defined by KRS 199.011(3) and 600.020(7).

(3) "Caregiver" is defined by KRS 605.102(1).

(4) "Child" is defined by KRS 199.011(4) and 600.020(9).

(5) "Reasonable and prudent parent standard" is defined by 199.011(15) and 600.020(52).

Section 2. Eligibility determination and application. (1) The cabinet and the child's caregiver shall use the reasonable and prudent parent standard to determine a child's readiness to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(2) The cabinet shall form a team to include:

(a) The child;

(b) The child's caregiver or caregiver representative, including the child's foster parent if applicable; and

(c) Another person involved with the child who shall assist the cabinet in making a determination whether the child is age or developmentally appropriate to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(3) The child's team shall discuss the following to ascertain the child's readiness to obtain his or her instruction permit or operator's license:

(a) The child's understanding of the requirements to obtain an instruction permit or operator's license;

(b) The child's roles and responsibilities in meeting the operator's permit or license requirements;

(c) Liability and financial responsibilities;

(d) Ongoing academic requirements;

(e) Age and developmental level in accordance with KRS 605.102;

(f) Placement history and current placement stability;

(g) Previous driving history when applicable; and

(h) Child's history of public charges.

(4) The child shall:

(a) Obtain a copy of his or her commitment order from cabinet staff or the court;

(b) Complete the DPP-17, Readiness for Driving Agreement; and

(c) Authorize the cabinet to request and inspect the child's driving record.

(5) If a child's team determines that a child possesses the requisite skills and understanding of the responsibilities associated with obtaining an operator's permit or license and operating a motor vehicle or motorcycle, the child's team shall allow the child to proceed with the application process.

(6) Prior to a child proceeding to the circuit clerk's office to obtain his or her instruction permit, cabinet staff shall provide verification to the child on cabinet letterhead that the child is in foster care.

(7) Any person who signs an operator's permit or license application for a child shall be responsible in accordance with KRS 186.470 or 186.590.

(8) A child's team shall develop a plan to assist a child in obtaining an operator's permit or license in the future if:

(a) The team determines that the child is not ready to apply; and

(b) The barrier to obtaining an operator's permit or license is within the ability of the child to correct.

Section 3. Insurance. (1) A child in the custody of the cabinet shall:

- (a) Be added to his or her caregiver's insurance policy; or
- (b) Apply to obtain a non-owner insurance policy with the assistance of the cabinet to the extent that resources are available.
- (2) To the extent that funds are available, the cabinet shall:
 - (a) Fund, in whole or part, a non-owner insurance policy for a child; or
 - (b) Reimburse, in whole or part, a caregiver who has added a foster child to a vehicular insurance policy for the foster child's portion of the premium.
- (3) Any person who permits a minor under the age of eighteen (18) to drive his or her vehicle shall comply with KRS 186.590.
- (4) A child in the custody of the cabinet shall follow all procedures required by the insurance company during the application process.

Section 4. Cancellation. (1) Cancellation of an operator's license, motorcycle operator's license, intermediate license, or instruction permit for a child in the custody of the cabinet shall be made in accordance with KRS 186.470 and 605.102.

(2) A person who files the verified written request for cancellation of a child's operator's license, motorcycle operator's license, intermediate license, or instruction permit shall provide notice to the cabinet in accordance with KRS 186.470.

Section 5. Incorporation by Reference. (1) "DPP-17, Readiness for Driving Agreement", 7/17, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2017 Ky. Acts ch.11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by allowing children in the custody of the cabinet, who are age or developmentally appropriate, and who meet statutory requirements, to apply for and obtain their operator's license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of a process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license in accordance with 2017 Ky. Acts ch. 11.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the

authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect children in foster care who are sixteen (16) and seventeen (17) years of age and wish to obtain an operator's permit or license. There are approximately 1,300 children age sixteen (16) and seventeen (17) years currently in the custody of the cabinet, though a percentage of the children will not seek an operator's permit or license, will not meet statutory requirements regarding school attendance and academic achievement, or will not present as age or developmentally appropriate.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A foster child will be required to undergo an assessment by the cabinet and the child's caregiver, the child's team, to determine whether the child is age or developmentally appropriate--measures commensurate with any parent's determination about a child's appropriateness to pursue an operator's permit or license. The foster child will also be required to authorize the cabinet to request and inspect the child's driver's history.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not directly impose any new costs on regulated entities. To the extent resources are available, the cabinet will absorb costs for children to obtain an operator's permit or license and insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will have a higher degree of normalcy as a result of this administrative regulation. Obtaining an operator's permit or license could positively affect the foster children by allowing them to experience the same rites of passage as other children their age and to pursue academia and employment to support a smoother transition into, and greater self-sufficiency in, adulthood.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), including Chafee Foster Care Independence Program funds, and State General Funds are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increases in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, 675, 677

2. State compliance standards. KRS 194A.050(1), 605.102(6)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, 675, 677

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky Transportation Cabinet, and circuit clerks will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.102(6), 42 U.S.C. 672, 675, 677

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation may generate revenue in the form of permit and license fees for youth who had previously been unable to obtain a permit or license prior to age 18.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation may generate revenue in the form of permit and license fees.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(As Amended at ARRS, July 11, 2017)

4 KAR 1:010. General Compliance with Federal Tax Laws.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.402, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 26 U.S.C. 414(u), 29 U.S.C. 623(i), and 38 U.S.C. 4301-4334 ~~and 29 U.S.C. 623(f).~~

STATUTORY AUTHORITY: KRS 21.402, 21.530, 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(3) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements to ensure compliance with federal tax laws.

Section 1. Definitions. (1) "Differential wage payment" is defined by 26 U.S.C. 3401(h)(2).

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Compliance with 26 U.S.C. 401(a)(8) for Forfeitures. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases.

Section 3. Compliance with 26 U.S.C. 401(a)(17) for Compensation Limit. (1) For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any plan year shall not exceed \$200,000. This limitation shall be adjusted at the same time and in the same manner as under 26 U.S.C. 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective for plan years beginning with or within that calendar year, and the first adjustment to the \$200,000 limitation shall be effective on January 1, 1990.

(2)(a) For years beginning on or after January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any determination period shall not exceed \$150,000, as adjusted for the cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(b) For plan years beginning on or after January 1, 2002, the annual compensation of each member taken into account in determining all benefits provided under the Plans for any determination period shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(c) The cost-of-living adjustment in effect for a calendar year shall apply to any determination period beginning with or within that calendar year.

(3) If compensation for any prior determination period is taken into account in determining a member's benefits for the current plan year, the compensation for that prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(a) For this purpose, in determining benefits in plan years

beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989 shall be \$200,000.

(b) In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 shall be \$150,000.

(c) In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date shall be \$200,000.

Section 4. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Judicial Form Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution. Plan benefits shall not be subject to employer discretion.

Section 5. Compliance with 26 U.S.C. 401(h). (1) No diversion. At any time prior to the satisfaction of all liabilities under the Plan to provide for the payment of medical benefits described in 26 U.S.C. 401(h), the corpus or income of the medical benefits account shall not be used for, or diverted to, any purpose other than the providing of Plan benefits.

(2) Reversion. Any amounts which are contributed to fund medical benefits described in 26 U.S.C. 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the Plan shall be returned to the Commonwealth.

(3) Forfeitures. If a member's interest in the medical benefits account is forfeited prior to termination of the Plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce contributions to fund the medical benefits described in 26 U.S.C. 401(h).

(4) ~~Despite the definition of the dependent in~~ [Notwithstanding] KRS 21.427(1)(b), and as required by KRS 21.540(3) to implement federal requirements, including 26 U.S.C. 401(a) and for purposes of the Plans' 401(h) retiree medical benefits account, the term "dependent" means[shall mean] any individual who is a child (as defined in 26 U.S.C. 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age twenty-seven (27). [Provided, however, that as of the effective date of state legislative change approving the same, the term "dependent" shall mean any individual who is a child (as defined in 26 U.S.C. 152(f)(1)) of a retired employee who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22).]

(5)(a) The health benefits of the 401(h) account shall be subordinate to the retirement benefits provided by the Plans.

(b) No life insurance protection is provided by the Plans.

(c) The[This] requirement in paragraph (a) of this subsection shall[not] be satisfied if[unless] the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the Plans.

(d) The determination of contributions shall be made[determined] on an aggregate basis since the inception of the 401(h) arrangement.

(6) The mandatory contribution established by the Plans shall be reasonable and ascertainable in accordance with 26 C.F.R. 1.401-14(c)(3).

Section 6. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be

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governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334.

(2) Effective for deaths on or after January 1, 2007, if a member dies while performing qualified military service (as defined in 26 U.S.C. 414(u)), the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) under the Plans had the member resumed and then terminated employment on account of death.

(3) Effective for Plan Years beginning on or after July 1, 2009, to the extent permitted by 26 U.S.C. 414(u)(12), an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment, and the differential wage payment shall be treated as compensation solely for Internal Revenue Code purposes and not for determining Plan benefits.

Section 7. Compliance with 29 U.S.C. 623(i). ~~[(4)]~~ Termination Requirements. Upon termination of the Plan, the interest rate and mortality table used to determine the amount of any benefit under the Plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the Plan for such purpose as of the termination date.

Section 8. Hybrid Cash Balance Plan. This section shall apply solely to the hybrid cash balance benefit tier of the Plan under KRS 21.402.

(1) Geometric Average Net Investment Return. The Plan's geometric average net investment return shall be computed in accordance with KRS 21.402 and based on returns generated by assets of the individual Plan's segregated hybrid cash balance benefit tier to the extent such assets are segregated for investment purposes.

(2) Refund. Refunds may be requested at any time in accordance with KRS 21.402 and shall be paid as soon as administratively practicable following qualification for refund and request of the member. ~~A[No]~~ partial ~~refund[refunds]~~ shall ~~not~~ be permitted.

(3) Establishment of Hypothetical Accumulated Account Balance.

(a) A member's accumulated account balance shall be a hypothetical account for bookkeeping purposes only. ~~It, and neither~~ The maintenance ~~or[nor]~~ the adding of credits ~~to the hypothetical accumulated account balance[thereto]~~ shall ~~not~~ be construed as:

1. An allocation of assets of the Plan to, or a segregation of such assets in, any such hypothetical accumulated account balance; ~~it~~ or

2. Otherwise creating a right for any member to receive specific assets of the Plan.

(b) Benefits provided under the cash balance benefit tier shall be paid from the assets of the applicable Plan.

(c) ~~It~~ Interest credits shall ~~not~~ accrue to any portion of the hypothetical accumulated account balance after the annuity starting date that applies to that portion.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email apauw@rwsvlaw.com.

FINANCE AND ADMINISTRATION CABINET Kentucky Judicial Form Retirement System (As Amended at ARRS, July 11, 2017)

4 KAR 1:040. Limitation on Benefits.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360,

21.370, 21.375, 21.380, 21.385, 21.400, 21.402, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(16), 415

STATUTORY AUTHORITY: KRS 21.402, KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.402(8) and 21.540(3) ~~authorize[authorizes]~~ the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations ~~to administer the provisions of the hybrid cash balance benefit tier and~~, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements for the administration of testing contribution and benefit limits in accordance with 26 U.S.C. ~~[Section]~~ 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "415(d) limit" means the limitation on cost of living adjustments established by 26 U.S.C. 415(d).

(4) ~~[(3)]~~ "Annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(5) ~~[(4)]~~ (a) "Permissive service credit" means service credit:

1. Recognized by the Plan for purposes of calculating a member's benefit under the Plan;

2. Which the member has not received under the Plan; and

3. Which the member shall receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(6) ~~[(5)]~~ "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. This administrative regulation shall apply to the Plans as of July 1, 2007. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these Plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415 and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 3. Basic 415(b) and 415(d) Limitations~~[Limitation]~~.

(1) A member shall not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1 and subject to any additional limits that are specified in this administrative regulation.

(2) A member's annual benefit payable in any limitation year from a Plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

(3) ~~If [in the case of]~~ a member ~~[who]~~ has had a severance from employment in any previous or subsequent year, the member's annual benefit, including any cost of living increases, shall be tested under the then applicable ~~[26 U.S.C.]~~ 415(d) limit, including, any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d) and the Treasury Regulations ~~located in~~

26 C.F.R. 1.415(d)-1[thereunder].

Section 4. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in Section 3 of this administrative regulation, the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations located in 26 C.F.R. 1.415(b)-1. For limitation years after December 31, 2008, for purposes of adjusting any benefit or limitation under 26 U.S.C. 415(b)(2)(B), (C) and (D), the mortality table used shall be the applicable mortality table within the meaning of 26 U.S.C. 417(e)(3)(B).

Section 5. Benefits Not Taken into Account for 415(b) Limit. ~~[(1)]~~ For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

~~[(1)]~~[(a)] Any ancillary benefit which is not directly related to retirement income benefits;

~~[(2)]~~[(b)] That portion of any joint and survivor annuity if the annuity is a qualified joint and survivor annuity; or

~~[(3)]~~[(c)] Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations located in 26 C.F.R. 1.415(b)-1 to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 6. Other Adjustments in 415(b) limitation. (1) If the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this administrative regulation shall be reduced in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1 pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in subsection (1) of this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. (1) The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 4 of this administrative regulation multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10).

(2) The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent.

(3) The reduction provided by this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 8. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under the Plan, the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, the Plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3) The Plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under the Plan.

(4) For purposes of subsection (3) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, nonqualified service credit shall be the permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the Plan.

(5) For service described in subsection (4)(a), (b), or (c) of this section, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(6) For a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (3) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable to the Plan shall apply to these amounts and any benefits attributable to these amounts.

Section 9. Repayments of Cashouts. Any repayment of contributions (including interest) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email apauw@rwsvlaw.com.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(As Amended at ARRS, July 11, 2017)**

4 KAR 1:050. Code of Professional Conduct.

RELATES TO: KRS 21.440, 21.450, 21.530, 21.540, 21.550, and 21.560

STATUTORY AUTHORITY: KRS 21.450(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.450(4) requires[authorizes] the board of trustees of the Judicial Form Retirement System to establish ethics policies and procedures by promulgation of administrative regulations. This administrative regulation establishes those ethics policies and procedures.

Section 1. Definitions. (1) "Board" means the board of trustees

of the System.

(2) "Family Member" means a spouse, parent, sibling, grandparent, grandchild, or child of a trustee.

(3) "System" means the Judicial Form Retirement System.

(4) "Trustee" means a trustee of the board.

Section 2. Informed Basis. ~~[(1)]~~ A trustee shall discharge all duties on an informed basis based on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the executive director of the System, legal counsel, public accountants, actuaries, or other persons as to matters which the trustee honestly believes are within the person's professional or expert competence.

Section 3. Official Position. ~~A[(1) No]~~ trustee, alone or through others, shall not knowingly use or attempt to use his or her official position to secure or create privileges, exemptions, or advantages to the derogation of the public interest at large.

Section 4. Gifts. ~~A[(1) No]~~ trustee, ~~[nor]~~ the trustee's spouse, or a dependent child~~[,]~~ shall not knowingly accept any gifts or gratuities, including campaign contributions, travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five (25) dollars in a single calendar year from:

~~(1)~~ Any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the System;~~[,] or~~

~~(2)[from]~~ Any group or association which has as its primary purpose the representation of those persons or businesses.

Section 5. Disclosure. (1) A trustee shall disclose to the other trustees, any direct or indirect interest in any undertaking that puts the trustee's personal interest in conflict with that of the System. The disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A trustee who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision may[should] affect the trustee or the trustee's business, profession, or occupation in a manner different from the business, profession, or occupation of the other trustees.

(2) A trustee shall annually file a financial disclosure report with the System, using~~either~~ the Financial Disclosure Report form for a judge as required by KRS 61.710 to 61.780 and as incorporated by reference in 32 KAR 1:090, the Statement of Financial Disclosure form for a member of the General Assembly as required by KRS 6.787 and as incorporated by reference in 2 KAR 2:020, or the Financial Disclosure Report[a] form incorporated by reference in this administrative regulation for any other person serving as a trustee, which includes the following disclosures:

(a) A description of any financial interest the trustee has in any company or firm that does business with the System;~~[,]~~

(b) A description of any personal financial interests, direct or indirect, not listed in subsection[Section 5] (2)(a) of this section[above,] for the trustee and any family member which may[could] conflict or appear to conflict with the trustee's duties and responsibilities to the System;~~[,]~~

(c) A description of employment or compensation which the trustee receives from any contractors or vendors of the System;~~and[,]~~

(d) A description of any interest in property, tangible or intangible, or any other assets or businesses[business] which may constitute or cause a conflict of interest with the trustee's duties.

(3) Any trustee who knowingly and willfully provides false, misleading, or incomplete information on the required disclosure form shall be subject to disciplinary action, up to and including, removal from the board. The form shall be maintained in the System office and shall be made available to the public upon request.

Section 6. Incorporation by Reference. (1) "Financial

Disclosure Report" July 2017 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Judicial Retirement System, 305 Ann Street, Suite 302, Whitaker Bank Building, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email: apauw@rwsvlaw.com.

OFFICE OF SECRETARY OF STATE (As Amended at ARRS, July 11, 2017)

30 KAR 2:010. Certification of vacancy in nominations.

RELATES TO: KRS 118.105

STATUTORY AUTHORITY: KRS 118.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS

14.025(2) requires the Department of State to be responsible for elections. KRS 118.105 authorizes the Secretary of State to certify that a vacancy exists in a nomination because of death, disqualification to hold the office sought, or severe disabling condition which arose after the nomination [Senate Bill 223, enacted during the 1990 Regular Session of the General Assembly, amended KRS 118.105(1), (3) and (4), governing certification by the Secretary of State that a vacancy exists in a nomination governed by KRS 118.105. This administrative regulation is required to establish the procedure for the determination and certification of a vacancy under the provisions of KRS 118.105].

Section 1. Notification of Vacancy. (1) The Secretary of State shall be notified of the vacancy in a nomination governed by KRS 118.105.

(2) The notification shall:

(a) Be written;

(b) Be dated;

(c) State the reason for the vacancy;

(d) Contain documentation to substantiate the reason for the vacancy;

(e) Be signed by the person making the notification; and

(f) Be notarized.

(3) The notification may be made by:

(a) The candidate;

(b) The governing authority of a party;

(c) A registered voter; or

(d) An opposing candidate.

(4) The notification shall be delivered to the Secretary of State by:

(a) Certified mail;

(b) Fax;

(c) Email; or

(d) Any person authorized by the person making the notification [The person making the notification].

Section 2. Documentation to Substantiate Reason for Vacancy.

(1) Documentation to substantiate the reason for a vacancy shall be filed with the notification by the candidate or governing authority of the party as provided by this section. For:

(a) Death of a candidate: a certificate of death or other evidence satisfactory to the Secretary of State, such as a:

1. Certification or written statement from the coroner; or

2. Certification from a funeral director;

(b) Disqualification to hold the office sought: evidence of legal disqualification; and

(c) Severe disabling condition: medical evidence of the

condition.

(2) Medical evidence of a severe disabling condition shall consist of medical evidence provided by:

(a) A licensed and practicing:

1. Physician;
2. Osteopath;
3. Psychologist;
4. Psychiatrist; or

(b) Other medical professional qualified to make a determination that the candidate is suffering from a severe disabling condition.

(3) The documentation filed to substantiate the reason for vacancy may be challenged, in writing, by:

- (a) The governing authority of an opposing party;
- (b) An opposing candidate; or
- (c) A registered voter.

(4)(a) The Secretary of State shall review all documentation relating to the reason for a vacancy.

(b) If the Secretary of State[he] determines that additional documentation is required, he or she shall request a review:

1. Of the medical evidence of a severe disabling condition filed with the notification; or
2. By a medical professional specified in subsection (2) of this section.

Section 3. In accordance with KRS 118.105, the Secretary of State shall not certify that a vacancy exists if he or she determines that the documentation filed to substantiate the reason for the vacancy does not establish that a vacancy exists because of:

- (1) Death;
- (2) Disqualification to hold the office sought; or
- (3) A severe disabling condition which arose after the nomination.

LINDSAY HUGHES THURSTON, Assistant Secretary of State

APPROVED BY AGENCY: May 15, 2017

FILED WITH LRC: May 15, 2017 at 9 a.m.

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**OFFICE OF SECRETARY OF STATE
(As Amended at ARRS, July 11, 2017)**

30 KAR 5:060. Search requests and reports.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing [øf] KRS Chapter 355.9. This administrative regulation establishes the requirements governing search requests and reports.

Section 1. General Requirements. The filing officer shall maintain for public inspection a searchable index of active records in the UCC Information Management System. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. Regardless of the retrieval method, the following shall be retrieved:

- (1) The initial financing statement; and
- (2) Each active record related to the initial financing statement.

Section 2. Search Requests – Required Information. Search requests shall include the following:

(1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials. A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the

search.

(2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.

(3) Fee. The five (5) dollar fee shall be tendered, in accordance with KRS 355.9 - 525(3), if the request is in writing.

(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.

Section 3. Search Requests - Optional Information. A search request may include the following:

(1) Copies. The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

- (a) Include a particular debtor address;
- (b) Include a particular city in the debtor address;
- (c) Were filed on a particular date or within a particular range of dates; or
- (d) Include a particular secured party name.

(2) Scope of search. A requesting party may ask for a search that reports all active records retrieved by the search, rather than only unexpired records retrieved by the search.

(3) Mode of delivery. A search request may specify a mode of delivery for search results. This request shall be honored if the requested mode is made available by the filing office, and all requisite fees, under KRS 355.9 - 525(3), are tendered.

Section 4. Search Methodology. (1) Search results shall be produced by the application of search logic to the name presented to the filing officer. Human judgment shall not play a role in determining the results of the search.

(2) Standard search logic. The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches unless the search request specifies that a nonstandard search logic be used.

(a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(b) A distinction shall not be made between upper and lower case letters.

(c) The character "&" (the ampersand) shall be deleted and replaced with the word[characters] "and" each place it appears in the name.

(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.

(e) The word "the" at the beginning of an organization debtor name shall be disregarded.

(f) All spaces shall be disregarded.

(g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC Information Management System all financing statements with

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individual debtor names that consist of only the surname.

(i) The following words ***shall/will*** be disregarded as noise words:

- 1.**[a.]** "agency";
- 2.**[b.]** "association";
- 3.**[c.]** "assn";
- 4.**[d.]** "associates";
- 5.**[e.]** "assoc";
- 6.**[f.]** "assc";
- 7.**[g.]** "attorneys at law";
- 8.**[h.]** "bank";
- 9.**[i.]** "national bank";
- 10.**[j.]** "na";
- 11.**[k.]** "business trust";
- 12.**[l.]** "charter";
- 13.**[m.]** "chartered";
- 14.**[n.]** "company";
- 15.**[o.]** "co";
- 16.**[p.]** "corporation";
- 17.**[q.]** "corp";
- 18.**[r.]** "credit union";
- 19.**[s.]** "cu";
- 20.**[t.]** "federal credit union";
- 21.**[u.]** "fcu";
- 22.**[v.]** "federal savings bank";
- 23.**[w.]** "fsb";
- 24.**[x.]** "general partnership";
- 25.**[y.]** "gen part";
- 26.**[z.]** "gp";
- 27.**[aa.]** "incorporated";
- 28.**[bb.]** "inc";
- 29.**[cc.]** "limited";
- 30.**[dd.]** "ltd";
- 31.**[ee.]** "ltee";
- 32.**[ff.]** "limited liability company";
- 33.**[gg.]** "lc";
- 34.**[hh.]** "llc";
- 35.**[ii.]** "limited liability partnership";
- 36.**[jj.]** "llp";
- 37.**[kk.]** "lllp";
- 38.**[ll.]** "limited partnership";
- 39.**[mm.]** "lp";
- 40.**[nn.]** "medical doctors professional association";
- 41.**[oo.]** "mdpa";
- 42.**[pp.]** "medical doctors professional corporation";
- 43.**[qq.]** "mdpc";
- 44.**[rr.]** "national association";
- 45.**[ss.]** "partners";
- 46.**[tt.]** "partnership";
- 47.**[uu.]** "professional association";
- 48.**[vv.]** "prof assn";
- 49.**[ww.]** "pa";
- 50.**[xx.]** "professional corporation";
- 51.**[yy.]** "prof corp";
- 52.**[zz.]** "pc";
- 53.**[aaa.]** "professional limited liability company";
- 54.**[bbb.]** "pllc";
- 55.**[ccc.]** "real estate investment trust";
- 56.**[ddd.]** "registered limited liability partnership";
- 57.**[eee.]** "rllp";
- 58.**[fff.]** "savings association";
- 59.**[ggg.]** "sa";
- 60.**[hhh.]** "sole proprietorship";
- 61.**[iii.]** "sp";
- 62.**[jjj.]** "spa";
- 63.**[kkk.]** kkk. "trust";
- 64.**[lll.]** "trustee"; **and**
- 65.**[mmm.]** "as trustee".

(i)(i) After using the requirements outlined in paragraphs (a) through (h i) of this subsection to modify the name being searched, the search shall retrieve from the UCC Information Management System all unexpired records, or, if requested by the searcher, all active records, that pertain to financing statements

with debtor names that, after being modified as provided in Section 5 of this administrative regulation, exactly match the modified name being searched.

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.

Section 6. Search Responses. Responses to a search shall include the following:

(1) Copies. Copies of all UCC records retrieved by the search, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) Filing office identification. Identification of the filing office responsible for the search response;

(b) Unique search report identification number. Unique number which identifies the search report;

(c) Report date and time. The date and time the report was generated;

(d) Through date and time. The date and time at or prior to which a UCC record was filed with the filing office in order for it to be reflected on the search;

(e) Certification date. The certification date and time for which the search is effective;

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided. Name as provided by searcher;

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched; and

(l) Copies. Copies of all UCC records revealed by the search and requested by the searcher. Copies of UCC records shall not be available for electronic search requests.

(3) Report. The search report shall contain the following:

(a) Identification. Identification of the filing office responsible for the search report;

(b) Search report identification number. Unique number assigned under subsection (2)(b) of this section; and

(c) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, ***including whether the searcher has requested active records or only unexpired records[regardless of]***. Financing statement information shall include the following:

1. The initial financing statement file number;
2. The date and time the initial financing statement was filed;
3. The lapse date;
4. The debtor name that appears of record;
5. The debtor address that appears of record;
6. The secured party name that appears of record;
7. The secured party address that appears of record;
8. An indication of type of each amendment, if any;
9. The date and time each amendment, if any, was filed;
10. The amendment file number of each amendment, if any;
11. The date and time a correction statement, if any, was filed;
- and
12. The date and time a filing officer statement, if any, was filed.

LINDSAY HUGHES THURSTON, Assistant Secretary of State

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 15, 2017 at 9 a.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 11, 2017)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

5. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

6. A letter of explanation that addresses each conviction, if applicable;

7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and

8. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination[or until the provisional license expires, whichever comes first].

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3)(b).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's[their] transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.470 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 6, 2017

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 11, 2017)**

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031, 314.041, 314.051, 314.091, 314.103, 314.109, 314.470, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction, territory, or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1. a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by

the licensing authority and is not subject to disciplinary action;

(h) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI;

(i) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board; and

(j) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application.

(2) An application shall be valid for a period of six (6) months. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months if the requirements for licensure have not been met, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3)(b).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(b)(i) of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall:

1. ~~Complete a refresher course approved by the board, pursuant to 201 KAR 20:220, which shall have been completed within two (2) years of the date of the application; or~~

2. ~~complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.~~

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets all of the requirements of

Section 1(1)(a) ~~through (j), except for paragraph (g), (b), (c), (d), (e), (f), (i), (j), and (k)]~~ of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to ensure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(13). An applicant for an LPN license pursuant to KRS 314.041(13) shall meet the requirements of this administrative regulation.

Section 6. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 6, 2017

FILED WITH LRC: April 24, 2017 at 3 p.m.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 11, 2017)**

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS ~~49.480~~, 119.025, 197.410(2), ~~[346-185]~~, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).

(2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole

consideration.

(3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(4) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or

(b) Answer the detainer.

(5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(7) "Parole for violent offender" is defined in KRS 439.3401.

(8) "Physical injury" is defined in KRS 500.080(13).

(9) "Serious physical injury" is defined in KRS 500.080(15).

(10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his postincarceration supervision by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;

2. Committed on or after July 15, 2002, which is:

a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree;

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. Committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in

KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) Subsequent parole review. Except as provided in KRS 439.340(14):

(a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and

(b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served

for parole eligibility on the additional sentence for the crime committed while in the institution; and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority. If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

(1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;

(2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and

(3) All other release requirements, including victim notification and re-entry planning, are completed.

The Chairperson of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the emergency regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VAN HOOSE, Chairperson

APPROVED BY AGENCY: April 17, 2017

FILED WITH LRC: April 17, 2017 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(As Amended at ARRS, July 11, 2017)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," July 11, 2017[August 14, 2012], are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01	Public Information and News Media Access (Amended 5/15/08)
BCFC 02-01-01	Inmate Canteen (Amended 5/15/08)
[BCFC 02-08-01	Prisoners' Fund (Amended 8/14/12)
BCFC 05-02-01	Consultants, Research, and Student Interns (Amended 5/15/08)]
BCFC 06-01-01	Offender Records (Amended 8/14/12)
BCFC 06-02-01	Storage of Expunged Records (Amended 10/15/01)
BCFC 07-02-01	Preventative Maintenance Plan (Amended 6/15/12)
[BCFC 07-04-01	Smoking Control (Amended 6/15/12)]
BCFC 07-05-01	Permit Required Confined Space (Amended 8/14/12)
[BCFC 08-02-01	Fire Prevention (Amended 7/8/08)]
BCFC 08-03-01	Fire Procedures (Amended 5/15/08)
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
BCFC 09-05-01	Entry and Exit onto Institutional Grounds (Amended 5/12/17[Added 6/15/12])
BCFC 09-06-01	Search Policy and Disposition of Contraband (Amended 5/12/17[6/15/12])
[BCFC 09-08-01	Drug Abuse Testing (Amended 5/15/08)]
BCFC 09-08-02	Breathalyzer Testing (Amended 5/12/17[Added 10/15/01])
BCFC 09-09-01	Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
BCFC 09-14-01	Bell County Forestry Camp Restricted Areas

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(Amended 8/14/12)
 BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
 BCFC 09-28-01 Canine Unit (Amended 5/12/17[8/44/42])
 BCFC 10-01-01 Temporary [Segregation] Holding Area (Amended 7/11/17[5/42/47][8/44/42])
 BCFC 11-01-01 Food Services: General Guidelines (Amended 6/15/12)
 BCFC 11-02-01 Food Service Security (Amended 6/15/12)
 BCFC 11-03-01 Dining Room Guidelines (Amended 8/14/12)
 BCFC 11-04-01 Food Service: Meals (Amended 6/15/12)
 BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12)
 BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12)
 BCFC 11-05-02 Health Requirements of Food Handlers (Amended 8/14/12)
 BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12)
 BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 8/14/12)
 BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)
 BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)
 BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)
 BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)
 BCFC 12-03-02 Barber Shop Services and Equipment Control (Amended 5/15/08)
 BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)
 BCFC 13-01-01 Medical Services (Amended 5/12/17[8/44/42])
 BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 5/12/17[6/45/42])
 BCFC 13-03-01 Dental Services (Amended 5/12/17[5/45/08])
 BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/12/17[5/45/08])
 BCFC 13-05-01 Emergency Medical Care (Amended 5/12/17[8/44/42])
 BCFC 13-06-01 Consultations (Amended 5/12/17[5/45/08])
 BCFC 13-07-01 Health Records (Amended 6/15/12)
 BCFC 13-08-01 Vision and Optometry Services (Amended 5/12/17[7/8/08])
 BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)
 BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)
 BCFC 13-11-01 Informed Consent (Amended 5/15/08)
 BCFC 13-12-01 Mental Health Care (Amended 5/12/17[5/45/08])
 BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12)
 BCFC 13-14-01 Use of Pharmaceutical Products (Amended 8/14/12)
 BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/12)
 BCFC 13-16-01 Elective Services (Amended 6/15/12)
 BCFC 13-18-01 Serious and Infectious Diseases (Amended 5/12/17[5/45/08])
 BCFC 13-19-01 Continuity of Health Care (Amended 5/15/08)
 BCFC 13-20-01 Inmates Assigned to Health Services (Amended 5/15/08)
 BCFC 13-21-01 Suicide Prevention and Intervention Program (Amended 5/15/08)
 BCFC 13-24-01 Inmate Self-Administration of Medication (Amended 5/15/08)
 BCFC 13-25-01 Syringes, Needles, and Sharps Control (Amended 5/15/08)
 BCFC 13-26-01 Sexual Assault (Amended 5/15/08)
 BCFC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/08)
 BCFC 16-01-01 Inmate Visiting (Amended 7/11/17[5/42/47][6/45/12])

[BCFC 16-02-01 Telephone Communications (Amended 5/15/08)
 BCFC 16-03-01 Inmate Mail Regulations (Amended 5/15/08)
 BCFC 16-03-02 Inmate Packages (Amended 5/15/08)]
 BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
 BCFC 17-04-01 BCFC Inmate Property Control (Amended 7/8/08)
 BCFC 17-05-01 Inmate Canteen (Amended 5/15/08)
 [BCFC 18-01-01 Institutional Classification Committee (Amended 5/15/08)]
 BCFC 18-02-01 Identification of Special Needs Inmates (Amended 6/15/12)
 BCFC 19-01-01 Work Assignment (Amended 5/15/08)
 BCFC 19-02-01 Governmental Services Program (Amended 5/15/08)
 BCFC 20-01-01 Academic School (Amended 5/15/08)
 BCFC 21-01-01 Library Services (Amended 5/15/08)
 BCFC 22-01-01 Recreation and Inmate Activities (Amended 6/15/12)
 BCFC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/08)
 BCFC 23-01-01 Religious Services (Amended 5/15/08)
 BCFC 24-01-01 Social Services and Counseling Program (Amended 5/15/08)
 BCFC 24-01-02 Casework Services (Amended 5/15/08)
 BCFC 25-01-01 BCFC Pre-release Program (Amended 5/15/08)
 BCFC 25-02-01 Community Center Program (Amended 7/8/08)
 [BCFC 25-02-02 Inmate Furlough (Amended 5/15/08)]
 BCFC 25-04-01 Inmate Discharge Procedure (Amended 5/15/08)
 BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: May 11, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Division of Library Services (As Amended at ARRS, July 11, 2017)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250(2), 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regulation establishes the requirements for certificate renewals for public librarians.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) "Contact hour" means a unit of measuring continuing education training with one (1) hour of training equal to one (1) contact hour.

(3) "Editorial process" means one (1) or more editors at a publication reviews and approves submitted work.

(4) "Full-time" means working[more than] 100 or more hours per month.

(5) "Job-related course work or continuing education" means instruction other than in library science that is directly related to the

applicant's job.

(6) "Job-related professional organization" means a professional organization other than library science that is directly related to the applicant's job.

(7)(4) "Learning activity" means a class, institute, seminar, or workshop that is planned, coordinated, administered, and evaluated in terms of learning objectives.

(8)(5) "Library information[information] services" means [mean] duties performed by library employees that require special skills and knowledge to be performed properly.

(9) "Part-time" means working less than 100 hours per month.

(10) "Presenting" means instructional training that lasts ninety (90) minutes or less.

(10)(11)(6) "Professional library association, consortium, council, or board" means an organization of library staff[librarians] and persons interested in libraries.

(11)(12) "Teaching" means instructional training that lasts more than ninety (90) minutes.

Section 2. Required Certification Renewal by Public Library Position. (1) A [full-time or part-time] library director serving a population of more than 15,000 shall renew the professional certificate every five (5) years. 100 contact hours of continuing education shall be accumulated within the five (5) year period.

(2) A [full-time or part-time] library director serving a population of 15,000 or[and] less shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75)[100] contact hours of continuing education shall be accumulated within the five (5) year period.

(3) An[A full-time or part-time][An] assistant director, bookmobile or outreach staff[librarian], branch head, or department head shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75)[100] contact hours of continuing education shall be accumulated within the five (5) year period.

(4) Any other full-time position providing library information[information] services, as assigned by local library personnel[, as assigned by local library personnel,] shall renew the library experience certificate every five (5) years. Fifty (50) contact hours of continuing education shall be accumulated within the five (5) year period.

Section 3. Types of Certificates. The following certificates may be renewed for a period of five (5) years:

- (1) Professional Certificate I;
- (2) Professional Certificate II;
- (3) Professional Certificate III;
- (4) Professional Certificate IV;
- (5) [Professional Certificate IV;
- (5)] Paraprofessional Certificate; or
- (6)(5)(6)] Library Experience certificate.

Section 4. Sources of Learning Activities that Provide Contact Hours. (1) The board shall accept job-related coursework or continuing education offerings from an institution of higher education as follows:

- (a) Classes;
- (b) Institutes;
- (c) Seminars;
- (d) Workshops;
- (e) Conferences;
- (f) Lecture series;
- (g) Internships; or
- (h) Courses taken for academic credit.[(b) Courses taken for academic credit.]

(2) The board shall accept activities in a professional library or job-related association, consortium, council, or board as follows:

- (a) Participation in:
 1. Seminars;
 2. Workshops;
 3. Conferences; or

4. Lecture series; or

(b) The holding of an association, consortium, council, or board office, with a statement specifying the learning activity and derived educational benefit.

(3) The board shall accept participation in job-related seminars, workshops, conferences, or lecture series sponsored [or approved] by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job-related. These activities may be sponsored by individual libraries.

(5) [The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job related. These activities may be sponsored by individual libraries.

(5)] The board shall accept self-directed[the following][self-directed] learning activities that go[, beyond expected job duties, such as[as follows]], as follows]:

(a) Writing reviews of job-related[library] materials or[library-related] books, articles, or chapters that are published in statewide, regional, or national library or other job-related professional organization's publications and selected through an editorial process;

(b) Writing or editing an article for a job-related[library] publication with statewide, regional, or national distribution and selected through an[and] editorial process;

(c) Writing or editing a book on a job[library]-related topic selected for publication by a publishing company and published following an editorial process;

(d) Developing and presenting library-related instructional training for library staff, library school students,[or] library trustees, or other job-related professional organizations;

(e) Preparing and teaching a library or job-related course, workshop, seminar, or institute; or

(f) Listening to or viewing an audio or video recording of a job-related workshop presentation or conference program and submitting a written review indicating what was learned and how it relates to their job.

(6)(5)(6) The board shall require[documentation] that each learning activity incorporates new subject information[matter].

Section 5.(4) The conversion calculations for a type of activity to the number of contact hours shall be determined in accordance with the Certification Contact Hours Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certification of Librarianship.

Section 7. A fee of twenty (20) dollars shall be charged for each certificate renewal issued.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Certification Contact Hours Conversion Chart", June 1, 2017[March 1, 2017][January 8, 2010]; and
- (b) "Renewal Application for Certification of Librarianship", March 1, 2017[December 15, 2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 9[8] a.m. to 4[30] p.m.

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: June 15, 2017

FILED WITH LRC: June 15, 2017 at noon

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries & Archives, 300 Coffee Tree Rd, P.O. Box 537, Frankfort, Kentucky 40602, phone 502-564-8306, fax 502-564-5773, email kdla.certification@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(As Amended at ARRS, July 11, 2017)

787 KAR 2:040. Local workforce development area governance.

RELATES TO: KRS 151B.020(6), 29 U.S.C. 3101 et seq.
 STATUTORY AUTHORITY: KRS 151B.020(6)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas, establishes the guidelines for the hiring of staff by local workforce development boards, and requires a written agreement for entities that perform multiple functions in a local workforce development area under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. In addition to the minimum federal requirements set forth in 29 U.S.C. 3122, this administrative regulation provides further guidance and clarification necessary for effective local implementation activities.

Section 1. Local workforce development board membership criteria and operating guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification, Policy Number 15-001.

Section 2. Interlocal agreement. Each local elected official of a unit of general local government within a local workforce development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities, Policy Number 15-002.

Section 3. Partnership agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement, Policy Number 15-003.

Section 4. Identification of regions and designation of local workforce development areas. The process and procedures for the identification of regions and the designation of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with the Identification of Regions and Designation of Local Workforce Development Areas, Policy Number 15-004.

Section 5. Hiring of staff for local workforce development boards. ~~(1)~~ Local workforce development boards may hire a director and other staff in accordance with Local Workforce Development Board Staff, Policy Number 17-001.

Section 6. Entities performing multiple functions in a local workforce development area. ~~(1)~~ Entities that have been selected or otherwise designated to perform more than one (1) function in a

local workforce development area ~~shall~~**must** develop a written agreement ~~(in)~~ that, at a minimum, complies with Internal Controls and Conflicts of Interest Requirements for Entities Performing Multiple Functions, Policy Number 17-002.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001, March 31, 2017~~[July 4, 2015]~~;

(b) The "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002, March 31, 2017~~[March 4, 2015]~~;

(c) The "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003, October 1, 2015;~~[and]~~

(d) The "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004, May 14, 2015;

(e) The "Local Workforce Development Board Staff", Policy Number 17-001, March 31, 2017; and

(f) The "Internal Controls and Conflicts of Interest Requirements for Entities Performing Multiple Functions", Policy Number 17-002, March 31, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

HAL HEINER, Secretary

APPROVED BY AGENCY: March 31, 2017

FILED WITH LRC: March 31, 2017 at 4 p.m.

CONTACT PERSON: Beth Kuhn, Commissioner; Kentucky Department of Workforce Investment; 300 Sower Blvd., 4th Floor; Frankfort, Kentucky 40601, phone (502) 564-0372, fax (502) 564-9990, email Beth.Kuhn@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, July 11, 2017)

901 KAR 5:120. Induced termination of pregnancy reporting.

RELATES TO: KRS 61.870-61.884, Chapter 213, 311.595, 311.710-311.830

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (6)

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each induced termination of pregnancy that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(6) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. This administrative regulation establishes the reporting criteria for induced termination of pregnancy.

Section 1. Definitions. (1) "Probable post-fertilization age" means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced.

(2) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(3) "Serious risk of substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.

Section 2. Reporting. (1) ~~A person or institution shall comply with the reporting requirements of KRS 213.101(1). Within fifteen (15) days after the end of the month in which an induced termination of pregnancy occurs in Kentucky:~~

~~(a) A person in charge of an institution at which the termination occurs shall complete and file a report with the Office of Vital Statistics; or~~

~~(b) If the termination is performed outside of an institution, the attending physician shall complete and file a report with the Office of Vital Statistics.]~~

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the induced termination.

(3) The report shall be made through the cabinet's electronic database~~[an electronic database prescribed by the cabinet]~~ or on VS-913, Report of Induced Termination of Pregnancy.

(4) The report shall:

(a) Contain the information required to be certified in writing or determined by KRS 311.710-830 as follows:

1. The probable post-fertilization age of the unborn child;

2. Whether the termination was necessary to prevent the death of the pregnant woman or to avoid a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

3. The method or technique utilized; and

(b) Not contain information which could identify a physician, woman, or man involved. ~~[(5) The name of the person filing the report and the reporting institution shall not be subject to disclosure under KRS 61.870-884.]~~

~~[(5)](6)] Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.906:~~

~~[(a) Is a statistical report to be used only for medical and health purposes; and~~

~~(b) Shall not be incorporated into the permanent official records of the Office of Vital Statistics.]~~

Section 3. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(4) and (5).~~[Pursuant to KRS 213.101:~~

~~(1) A person or institution that fails to submit a report by the end of thirty (30) days following the date established in Section 2 of this administrative regulation shall be subject to a late fee of \$500 for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue;~~

~~(2) A person or institution that fails to submit a complete report more than one (1) year following the date established in Section 2 of this administrative regulation may be required by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court;~~

~~(3) Failure to comply with reporting requirements may subject a person or institution to actions affecting a license pursuant to KRS 311.595; and~~

~~(4) Intentional falsification of a report is deemed a Class A misdemeanor.]~~

Section 4. Incorporation by Reference. (1) Form VS-913, "Report of Induced Termination of Pregnancy", 5/2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public

Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amended After Comments)

16 KAR 2:020. Occupation-based career and technical education certification.

RELATES TO: KRS 156.095, 158.070, 158.816, 160.380, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The Education Professional Standards Board (EPSB) shall issue and reissue certificates for occupation-based career and technical teachers[education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers] employed by the public schools, the Kentucky Community and Technical College System, or the Kentucky Department of Education Office of Career and Technical Education (KDE).

(2) The EPSB may issue certificates[~~may be issued~~] for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the required Kentucky Academic Standards established in 704 KAR 3:303.(3) The EPSB shall issue certificates for occupation-based career and technical teachers[education] established in this administrative regulation to[shall]:

(a) [Be initially issued to]Teacher[teacher] candidates who are employed based upon required occupational experience in the occupation[subject] area to be taught; and

(b) The EPSB shall not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial issuance. The EPSB shall issue a provisional[internship] certificate to[for teaching] occupation-based career and technical teacher candidates[education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued to an applicant who has submitted a completed CA-3] for a duration period of one (1) year. The EPSB shall only issue the provisional certificate after the KDE and, if applicable, an accredited provider of an **approved** occupation-based educator preparation **degree** program recommends the teacher candidate for certification and the teacher candidate completes the requirements set forth in this Section.[upon completion of the following requirements:]

(a) For those teacher candidates who do not hold at least an associate degree in the occupation area in which the teacher candidate is seeking certification, the teacher candidate shall:[A minimum of a high school diploma or its equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center:]

1. Demonstrate that he or she has at least a high school diploma or its equivalent;

2. Demonstrate that he or she has four (4) years of successful and appropriate occupational experience in the occupation area in which certification is sought along with:

a. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an **approved** occupation-based educator preparation program for the occupation to be taught; and

b. Proof that KDE confirmed the occupational experience;

3. Demonstrate that he or she meets the assessment requirements set forth in 16 KAR 6:020;

4. The teacher candidate shall answer "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification if the board so chooses; and

5. Demonstrate that a local school district, the KDE, or the Kentucky Community and Technical College System has made an offer of employment.

(b) For those teacher candidates who hold either an occupation-based degree in the occupation area in which certification is sought or a degree from an approved occupation-based educator preparation degree program, the teacher candidates shall provide proof of that degree to the EPSB.[Four (4) years of successful and appropriate occupational experience in the area to be taught, with:

1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited occupational preparation program for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education Office of Career and Technical Education;]

(c) The teacher candidate shall answer "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification if the board so chooses.[The testing provisions established in 16 KAR 6:020;

(d) A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and

(e) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment, or the Kentucky Community and Technical College System.]

(2) First renewal of one (1) year provisional certificates. The EPSB shall issue the first renewal of the one (1) year provisional certificate to a requesting teacher candidate only after the KDE and, if applicable, an accredited provider of an occupation-based educator preparation degree program recommends the renewal of the provisional certificate and the teacher candidate meets the requirements set forth in subsection (2)(b).[shall require the successful completion of:]

(a) The KDE or the accredited provider of an occupation-based educator preparation degree program shall only recommend renewal of the first provisional certificate for a teacher candidate who does not hold an occupation-based degree in the area in which certification is sought after that teacher candidate:[Kentucky Teacher Internship Program established in 16 KAR 7:040; and]

1. Completes six (6) semester hours of academic credit or its equivalent in professional learning from NTI in areas such as classroom management; lesson planning and curriculum; assessment; academic integration of numeracy and literacy; instruction for students with special learning needs;

2. Completes the first year of professional learning through the NTI;

3. Receives a recommendation by the KDE or an accredited provider of an occupation-based educator preparation program for enrollment in the Kentucky Teacher Internship Program (KTIP);

(b) The teacher candidate shall answer "no" to all of the

EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification if the board so chooses. [Three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Kentucky Department of Education Office of Career and Technical Education.]

(3) Subsequent renewal of one (1) year provisional certificate. The EPSB shall issue any subsequent renewal of the one (1) year provisional certificate to a requesting teacher candidate only after the KDE or the provider of an approved occupation-based educator [occupational] preparation degree program recommends to the EPSB that the EPSB renew the one (1) year provisional certificate. The KDE or an approved occupation-based educator preparation degree program shall ensure that the teacher candidate meets the following requirements before recommending renewal[an applicant who has submitted a completed CA-3 after the successful completion of the internship shall require]:

(a) The completion of a minimum of six (6) semester hours of college credit for each renewal selected from the [approved] degree program; [sixty-four (64) semester-hour planned program for the preparation of teachers in information technology, industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and]

(b) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070; and[-]

(c) The teacher candidate shall answer "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification if the board so chooses.

(4) The one (1) year provisional certificate shall be limited to five (5), one (1) year renewals for a total validity period of six (6) years which do not need to be consecutive.[Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements.

(5) The one (1) year provisional certificate shall be limited to nine (9), one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.

(6) Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:

(a) receive the professional certificate established in Section 3 of this administrative regulation; and

(b) Adhere to the subsequent renewal requirements established in Section 3(3) of this administrative regulation.]

Section 3. Issuance and Renewal of the Professional Certificate. (1) [Initial] Issuance. The EPSB shall issue a professional certificate pursuant to this administrative regulation[for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued] for a duration period of five (5) years[one (1) year] to a requesting teacher candidate only after the KDE and, if applicable, a provider of an approved occupation-based educator preparation degree program recommends that the EPSB issue the professional certificate. Neither the KDE nor the provider of the approved occupation-based educator preparation degree program shall recommend issuance of the professional certificate until the teacher candidate has met[an applicant who has submitted a completed CA-3 upon completion of] the following

requirements:

(a) The teacher candidate receives an occupation-based degree or an approved occupation-based educator preparation degree.[Compliance with Section 2(1) of this administrative regulation; and]

(b) The teacher candidate completes the two (2) years professional learning through NTI sponsored by KDE; and[The completion of a planned program consisting of a minimum of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.]

(c) The teacher candidate successfully completes KTIP.

(2) [First]Renewal. The EPSB shall renew the professional certificate in accordance with 16 KAR 4:060.[a] The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010.

(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.

(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:

(a) Three (3) years of teaching or occupational experience in the occupational specialty; or

(b) Six (6) semester hours of college credit related to the certification area.]

Section 4. Disclosure of Background Information.[The planned program for occupation-based career and technical education teachers shall:] (1) Teachers and teacher candidates shall disclose certain background information to the EPSB whenever those teachers and teacher candidates apply for the issuance and renewal of the provisional certificate and the professional certificate by answering the following questions:[Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity;]

(a) Have you ever had a professional certificate, license, credential, or any document issued for practice denied, suspended, revoked, or voluntarily surrendered? If you have had a professional certificate, license, credential, or any other document issued for practice initially denied by a licensing body, but later issued, you must answer "yes."

(b) Have you ever been suspended or discharged from any employment or military service because of allegations of misconduct?

(c) Have you ever resigned, entered into a settlement agreement, or otherwise left employment as a result of allegations of misconduct?

(d) Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency?

(e) Have you ever been convicted of or entered a guilty plea, an "Alford" plea, or a plea of nolo contendere (no contest) to a felony or misdemeanor, even if adjudication of the sentence was withheld in Kentucky or any other state? Minor traffic violations should not be reported. Convictions for driving while intoxicated (DWI) or driving under the influence of alcohol or other drugs (DUI) must be reported.

(f) Do you have any criminal charges pending against you?

(g) If you answered affirmatively to any of the questions in this Section, has the EPSB previously reviewed the information?

(2) The EPSB shall provide teachers and teacher candidates with the opportunity to submit a narrative to the board to consider before the board approves the request for issuance or renewal of a provisional certificate or a professional certificate. The teacher or teacher candidate may include in their narrative any dates,

locations, school systems, court records, or any other information the teacher or teacher candidate would like the board to consider. [Utilize the proficiency evaluation established in 16 KAR 5:030;

(3) Be based upon the experienced teacher standards established in 16 KAR 1:010;

(4) Meet the specialty program association standards established in 16 KAR 5:010; and

(5) Be accredited by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5:010.]

Section 5. **(1) Effective July [August]1, 2018, the EPSB shall not issue a professional certificate to a teacher candidate who does not have at least an associate degree in the area in which the teacher candidate is seeking certification, and who has not completed the two (2) year professional learning through NTI sponsored by KDE unless that teacher candidate holds a valid, unexpired provisional certificate and was admitted into an approved occupation-based educator preparation program prior to July 1, 2018.**

(2) For a teacher candidate who holds a provisional certificate and was admitted into an approved occupation-based educator preparation program prior to July 1, 2018, the EPSB shall renew that teacher candidate's provisional certificate in accordance with the laws and regulations in effect at the time the first provisional certificate was issued as required by KRS 161.020.

(3) For a teacher candidate who was admitted into an approved occupation-based educator preparation program prior to July 1, 2018, the EPSB shall issue and renew that teacher candidate's professional certificate in accordance with the laws and regulations in effect at the time the teacher candidate's first provisional certificate was issued.

Section 6. Information Technology and Computer Science Teachers. (1) A teacher shall possess one (1) of the following credentials to instruct in the field of information technology or computer science:

(a) Provisional certificate established in Section 2 of this administrative regulation;

(b) Professional certificate established in Section 3 of this administrative regulation;

(c) Computer information systems certificate established in 16 KAR 2:010;

(d) Computer science endorsement established in 16 KAR 2:010; or

(e) Instructional computer technology endorsement established in 16 KAR 2:010.

(2) If a qualified teacher is not available for the position of information technology teacher, as attested to by the local school superintendent or the Associate Commissioner of the Kentucky Department of Education Office of Career and Technical Education, a one (1) year probationary certificate may be issued under the requirements established in 16 KAR 2:190. [Section 6. Incorporation by Reference. (1) "CA-3", 3/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

ROB AKERS, Board Chair

APPROVED BY AGENCY: July 6, 2017

FILED WITH LRC: July 7, 2017 at 2 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the assessment and internship requirements of KRS 161.030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for occupation-based career and technical education certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 provides that no person shall be eligible to hold the position of a teacher for which a certificate may be issued, or receive a salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; it also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers. KRS 161.030 provides that the EPSB alone has the authority to certify all teachers in public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for occupation-based career and technical education and establishes the procedures by which an applicant may apply for teaching certification in certain career and technical education areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will require that all teacher candidates seeking certification in occupation-based career and technical education obtain the minimum of an associate degree. This amendment will reduce the amount of time teacher candidates seeking certification in occupation-based career and technical education may take to complete the required degree from ten years to six years. This amendment require all teacher candidates seeking certification in occupation-based career and technical education to complete the internship in their second year rather than their first year of teaching.

This amendment will increase the support provided to all new teacher candidates seeking certification in occupation-based career and technical education by a professional development program sponsored by Kentucky Department of Education (New Teacher Institute) over a two year time period rather than delivering it in a two week time period. This amendment will no longer incorporate an application form by reference. This amendment will incorporate the character and fitness questions from the application into the regulation. This amendment will eliminate the specific reference to one type of certification (information technology teachers). This amendment will eliminate the requirement that all degree programs leading to certification for teacher candidates seeking certification in occupation-based career and technical education be approved by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5:010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to retain teachers of occupation-based career and technical education by improving the support they receive in the initial years of teaching. This amendment is necessary to ensure that teachers of occupation-based career and technical education are completing their degrees sooner thereby making them available to teach dual-credit courses sooner.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.020 require that teachers hold legal qualifications for their respective positions to be issued upon completion of programs prescribed by the EPSB.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the criteria necessary for certification of teachers of occupation-based career and technical education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the Kentucky Department of Education; it will impact 173 public school districts; it will impact at least five (5) educator preparation programs; it will impact teacher candidates seeking certification in occupation-based career and technical education areas not covered by 16 KAR 2:010; it will affect those students enrolled in 173 public school districts interested in enrolling in dual-credit courses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KDE and educator preparation providers will be responsible for supporting teacher candidates as teacher candidates work to complete their programs necessary for certification in a shorter time period. Educator preparation providers will need to evaluate their programs to determine whether the programs will still be viable options for teacher candidates seeking certification in specific occupation-based career and technical areas. Kentucky school districts will need to support teacher candidates seeking certification in occupation-based career and technical education in a shorter time period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a loss of revenue of some educator preparation providers who previously provided 64 credit programs that did not result in the issuance of a degree, but did result in a teaching certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. These amendments reflect Kentucky's commitment to recruit and retain quality teachers of occupation-based career and technical education that are on a path to achieving credentials necessary to teach dual credit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to the EPSB to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the EPSB to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The EPSB does not anticipate an additional fee or funding increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor does it indirectly increase fees.

(9) TIERING: Is tiering applied? No, tiering will not apply because all applicants for certification are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, the KDE, institutions of higher education, Kentucky public school districts, and occupation-based career and technical education teacher candidates.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1)(a) requires that the EPSB establish requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3)(a) states that the certification of all new teachers and teachers seeking additional certification shall require the successful completion of the appropriate assessments prior to certification.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amended After Comments)

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048[(7)]

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that the Education[Educational] Professional Standards Board (EPSB)[te] promulgate administrative regulations setting standards for educator preparation programs[approval of an educator preparation institution that offers a preparation program corresponding to a particular certificate]. KRS 161.030(1) requires that the board[te] promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

Section 1. Selection and Admission to Educator Preparation Programs. (1) ~~Each~~[~~In addition to the National Council for Accreditation of Teacher Education standards incorporated by reference in 16 KAR 5:010, each~~] accredited provider of an approved program of educator preparation[educator preparation institution] shall develop minimum standards for admission to its[initial] certification educator preparation programs[including those[university-based alternative] programs established pursuant to KRS 161.048[(7)] in accordance with this section.

(2) Admission to an approved undergraduate initial certification preparation program including those programs established pursuant to KRS 161.048(2), 161.048(3), 161.048(6), and 161.048(8) shall require the following:

(a) 1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed;

a. Grade point average (GPA) shall be calculated by

beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed.

b. If it is necessary to go back further than two (2) semesters then the courses in the third semester included in the calculation shall be chosen based on the highest grades earned during that third semester; and

(b) Successful completion of the following pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum score:

1. "Praxis Core Academic Skills for Educators (CASE): Reading (5712)" - 156; [Until August 31, 2014:

a. (i) "Pre-Professional Skills Test: Mathematics (0730)" - 174; or

(ii) "Computerized Pre-Professional Skills Test: Mathematics (5730)" - 174;

b. (i) "Pre-Professional Skills Test: Reading (0710)" - 176; or

(ii) "Computerized Pre-Professional Skills Test: Reading (5710)" - 176; and

c. (i) "Pre-Professional Skills Test: Writing (0720)" - 174; or

(ii) "Computerized Pre-Professional Skills Test: Writing (5720)" - 174.]

2. [Beginning September 1, 2014:

a. "Praxis Core Academic Skills for Educators (CASE): Reading (5712)" - 156;

b. "Praxis Core Academic Skills for Educators (CASE): Writing (5722)" - 162; and

3. [c.] "Praxis Core Academic Skills for Educators (CASE): Mathematics (5732)" - 150.

(3) Admission to an approved [a] graduate level initial certification educator preparation program [including an educator preparation program established pursuant to KRS 161.048(7).] shall require the following:

(a) 1. A bachelor's degree or advanced degree awarded by a regionally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(b) 1. Successful completion of the pre-professional skills assessments in subsection (2)(b) of this section; or

2. Successful completion of the Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding scores on the corresponding sections:

a. Verbal reasoning - 150 [(i) Verbal Reasoning taken prior to August 1, 2011 - 450; or

(ii) Verbal Reasoning taken after August 1, 2011 - 150];

b. Quantitative Reasoning - 143 [(i) Quantitative Reasoning taken prior to August 1, 2011 - 490; or

(ii) Quantitative Reasoning taken after August 1, 2011 - 143]; and

c. Analytical Writing - 4.0.

(4) Admission to an advanced certification educator preparation program shall require the following:

(a) 1. A statement of eligibility or an initial certificate earned by completion of an approved program through an approved educator preparation provider in Kentucky; or

2. A statement of eligibility or an initial certificate issued by EPSB and earned by completion of a program through an approved educator preparation provider; and

(b) 1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(c) 1. Completion of requirements for the administrative certificate as established in Title 16, Chapter 3; or

2. Completion of requirements for the certificate as established in 16 KAR 2:060, 16 KAR 2:070, and 16 KAR 2:090.

(5) Each accredited provider of an approved program of educator preparation [accredited educator preparation institution] shall have a formal application procedure for admission that [to an

initial teacher preparation program, which] shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;
2. Communication;
3. Creativity; and
4. Collaboration;

(b) Evidence that the applicant has reviewed the:

1. The Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and
2. The character and fitness questionnaire contained in Section III of the TC-4 incorporated by reference in 16 KAR 2:040; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(6) [(5)] The educator preparation program [Undergraduate students] shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(7) [(6)] The educator preparation program shall maintain electronic records that document that all students [admitted after September 1, 2012,] meet the requirements established in subsection (2) of this section.

Section 2. Selection and Admission to an Approved Educator Preparation Program for Occupation-Based Career and Technical Education. (1) Admission to an approved program of preparation for occupation-based career and technical education that results in certification pursuant to 16 KAR 2:020 shall require:

(a) A minimum of a high school diploma or equivalency exam.

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught which includes:

1. At least two (2) years of occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved program of preparation for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education, Office of Career and Technical Education;

(c) The assessment provisions established in 16 KAR 6:020; and

(d) An offer of employment from a state or local technology center, or a school district.

(2) Each [accredited] provider of an approved occupation-based [program of] educator preparation program shall have a formal application procedure for admission that shall include the following:

(a) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(b) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(3) The educator preparation provider shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(4) The educator preparation provider [program] shall maintain electronic records that document that all students meet the requirements established in subsections (1) and [subsection] (2) of this section.

(5) A provider of approved educator preparation programs shall provide notice to the EPSB which candidates it has admitted to an approved program of educator preparation within six (6) months of the candidate's admission.

(6) Failure of an approved educator preparation provider to provide EPSB with notice of each candidate it admitted to an approved program of preparation in accordance with this section may result in action against the provider's accreditation status.

Section 3. Assessment Recency. A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the

assessment administration date.

Section 4. Annual Report. (1) Each educator preparation provider[~~unit~~] shall submit an electronic report annually to the ~~EPSB[Education Professional Standards Board]~~ that includes the following program data on each candidate admitted to educator preparation programs:

(a) ~~EPSB[Education Professional Standards Board]~~ Person Identifier;

(b) Student School Identification number;

(c) Social Security number;

(d) Full name;

(e) Birth date;

(f) Reported ethnicity;

(g) Reported gender;

(h) Email address;

(i) Present home mailing address;

(j) Permanent home mailing address;

(k) Phone number;

(l) Admission date;

(m) Total number of credit hours prior to admission to the ~~provider's[institution's]~~ educator preparation program;

(n) Total number of credit hours in educator preparation courses completed prior to admission to the ~~provider's[institution's]~~ educator preparation program;

(o) Grade point average at admission;

(p) Current program enrollment status;

(q) Program completion date;

(r) Grade point average at program completion;

(s) Academic major at program completion; and

(t) Academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The ~~provider[institution]~~ shall electronically submit all data identified in subsection (1) to the ~~EPSB[Education Professional Standards Board]~~; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the ~~EPSB[Director of the Division of Educator Preparation]~~ that all required information has been entered.

(3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last ~~twelve (12)[eighteen (18)]~~ months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status[~~pursuant to 16 KAR 5:040, Section 24~~].

ROB AKERS, Board Chair

APPROVED BY AGENCY: July 6, 2017

FILED WITH LRC: July 7, 2017 at 2 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the admission standards that all educator preparation providers are to use when admitting educator candidates into educator preparation programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the educator candidates admitted to educator preparation programs are of high quality and have the professional dispositions expected of professional educators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(b) provides that the Educational Professional Standards Board (EPSB) is responsible for promulgating administrative regulations that set standards for educator preparation providers. KRS 161.030(1) requires that the board promulgate administrative regulations establishing

requirements for issuance of a certificate authorized under KRS 161.010 to 161.126.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the minimum requirements for admission into an educator preparation program that will lead to certification. This regulation applies to all traditional educator preparation programs, alternate education preparation programs, and educator preparation programs for occupation-based career and technical education.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds the admission requirements for educator candidates enrolling educator preparation programs for occupation-based career and technical education. This amendment will also align this regulation with the changes made to KRS 161.048 during the 2017 regular legislative session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the educator candidates admitted to educator preparation programs for occupation-based career and technical education are of high quality and have the professional dispositions expected of professional educators. The amendment is necessary to ensure that this regulation is not inconsistent with the admission requirements set forth in KRS 161.048.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028 requires that the EPSB set standards for educator preparation providers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets forth the admission requirements for both alternate educator preparation programs as well as educator preparation programs for occupation-based career and technical education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will have an impact on the EPSB as well as educator preparation providers of educator preparation programs of occupation-based career and technical education that have not previously complied with this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The EPSB will have to update its Admission and Exit System to ensure that it is tracking all educator preparation programs for teachers of occupation-based career and technical education; educator preparation program providers that offer programs for occupation-based career and technical education will need to begin complying with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any cost would be de minimus.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board would be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The EPSB does not anticipate an additional fee or funding increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor does it indirectly increase fees.

(9) TIERING: Is tiering applied? No, tiering will not apply because all educator preparation providers are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board and educator preparation providers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1)(b) provides that the Educational Professional Standards Board (EPSB) is responsible for promulgating administrative regulations that set standards for educator preparation providers. KRS 161.030(1) requires that the board promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amended After Comments)

16 KAR 8:040. Ranking of occupation-based career and technical education teachers.

RELATES TO: KRS 156.095, 161.020, 161.028, 161.030, 161.1211

STATUTORY AUTHORITY: KRS 161.1211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.1211 requires the Education Professional Standards Board (EPSB) to rank teachers. KRS 161.1211 requires the EPSB to give consideration to apprenticeship training and industrial experience to occupation-based career and technical education teachers when defining rank change requirements. [to determine equivalent qualifications for the salary ranks and directs that consideration be given to the apprenticeship and industrial experience of certain vocational and career and technical teachers]. This administrative regulation defines rank change requirements for occupation-based career and technical education teachers [equivalency for Rank III, Rank II, and Rank I classifications taking into account the factors of apprenticeship and industrial experience].

Section 1. (1) Equivalent ranking qualifications for occupation-based career and technical education teachers, as provided for in KRS 161.1211, shall be limited to those persons who are serving in positions identified as occupation-based career and technical

education and who hold one (1) of the certificates established in 16 KAR 2:020.

(2) Occupation-based career and technical education teachers identified in subsection (1) of this section who achieve certification as principal, supervisor, or coordinator of career and technical education may retain the same rank, or advance to a higher rank, earned on the basis of the provisions of this administrative regulation.

Section 2. A Rank III Classification for an occupation-based career and technical education teacher identified in Section 1 of this administrative regulation shall require the following:

(1) A one (1) year provisional certificate for teaching occupation-based career and technical education issued [established] in accordance with 16 KAR 2:020;

(2)(a) High school graduation; or

(b) The equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center; and

(3) Four (4) years of successful and appropriate occupational experience in the area to be taught, in accordance with 16 KAR 2:020 [Section 2-(1)(b)].

Section 3. A Rank II classification for an occupation-based career and technical education teacher identified in Section 1 of this administrative regulation shall require one of the following:

(1) An occupation-based career and technical educator associate degree issued in accordance with 16 KAR 2:020. [Completion of a planned program consisting of a minimum of sixty-four (64) semester hours of approved college credit established in 16 KAR 2:020]; or

(2) An occupation-based associate degree within the specific technical field in which certification was issued in accordance with 16 KAR 2:020. [Three (3) years of teaching experience as an occupation-based career and technical education teacher. The experience shall be further defined as follows:

(a) A full year of experience shall include at least 140 days of employment performed within the academic year; and

(b) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester;

(3) One (1) of the following certificates:

(a) Certificate for Vocational Education—Industrial Education, Ten (10) Year Certificate;

(b) Certificate for Vocational Education—Industrial Education, Five (5) Year Certificate;

(c) Any high school certification with an area of concentration in vocational industrial and technical education (certification code A77) or industrial education—preparation level (certification code A96);

(d) Certificate for Trades and Industrial Education; or

(e) A professional certificate for teaching occupation-based career and technical education established in 16 KAR 2:020.]

Section 4. A Rank I classification for an occupation-based career and technical education teacher identified in Section 1 of this administrative regulation shall require an occupation-based degree beyond an associate's degree within the technical field in which certification was issued in accordance with [the following:

(1) An approved bachelor's degree from a regionally accredited institution defined as follows:

(a) A bachelor's degree in technical education, industrial education, health occupations, health science, human services occupation, public service, information technology, personal services occupation or which has been planned with a teacher education institution and is specifically related to the occupation to be taught; or

(b) A bachelor's degree leading to a provisional high school certificate with an area of concentration identified in subsection (2)(c) (3)(c) of this section;

(2) Six (6) years of teaching experience identified as occupation-based career and technical education teacher. The experience shall be further defined as follows:

(a) A full year of experience shall include at least 140 days of

employment performed within the academic year; and

(b) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester;

(3) One (1) of the following certificates:

(a) Certificate for Vocational Education—Industrial Education, Ten (10) Year Certificate;

(b) Certificate for Vocational Education—Industrial Education, Five (5) Year Certificate;

(c) Any high school certification with an area of concentration in vocational industrial and technical education (certification code A77) or industrial education—preparation level (certification code A96);

(d) Certificate for Trades and Industrial Education; or

(e) A professional certificate for teaching occupation-based career and technical education established in 16 KAR 2:020 **and the standards established in 16 KAR 8:020, Section 2.**

ROB AKERS, Board Chair

APPROVED BY AGENCY: July 6, 2017

FILED WITH LRC: July 7, 2017 at 2 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for achieving a Rank I and Rank II for occupation-based career and technical education teachers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to attract and retain occupation-based career and technical education teachers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.1211 provides that the Education Professional Standards Board shall rank teachers. When determining ranks, KRS 161.1211 provides that the EPSB shall consider apprenticeship training and industrial experience.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 161.1211 by defining rank change requirements for occupation-based career and technical education teachers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will eliminate teaching experience as a requirement for occupation-based career and technical education teachers. The EPSB shall award a Rank II based on the relevant occupational experience of the occupation-based career and technical education teacher and the attainment of an associate degree; the EPSB shall award a Rank I based on the relevant occupational experience of the occupation-based career and technical education teacher and the attainment of a bachelor degree or higher.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to attract and retain teachers of occupation-based career and technical education by allowing them to be eligible for a rank change earlier in their teaching career.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.1211 provides that the Education Professional Standards Board shall rank teachers. When determining ranks, KRS 161.1211 provides that the EPSB shall consider apprenticeship training and industrial experience. The EPSB will be better able to satisfy the original intent of KRS 161.1211 by eliminating teaching experience as a requirement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the prior occupational experience and education of an occupation-based career and technical education teacher are the sole

considerations when determining rank.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact those entities that operate and manage Area Technology Centers, public school districts, and occupation-based career and technical education teachers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Occupation-based career and technical education teachers (OCTE teachers) will be eligible for rank changes earlier in their careers. Once occupation-based career and technical education teachers apply to the EPSB for their rank change, those public entities that employ those occupation-based career and technical education teachers will be required to pay those teachers more.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will result in OCTE teachers receiving a pay increase earlier in their career. By increasing the salaries of OCTE teachers, it will assist the public entities retain OCTE teachers. The impact on any public entity will depend on the number of OCTE teachers that the public entity employs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. These amendments reflect Kentucky's commitment to recruit and retain quality teachers of occupation-based career and technical education that are on a path to achieving credentials necessary to teach dual credit. This amendment may help entities recruit teacher candidates for occupation-based career and technical education.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The public entities that employ OCTE teachers include, but are not limited to, the KDE and public school districts. The cost of implementation of this regulation for these public entities will vary depending on the public entity, the number of OCTE teachers employed by the public entity, and the salary schedule of the public entity. The KDE administers Area Technology Centers across the Commonwealth of Kentucky. OCTE teachers make up the majority of employees in these Area Technology Centers. The KDE anticipates that this amendment will result in numerous OCTE teachers applying for a rank change. Once the OCTE teachers receive a rank change, the KDE will be required to pay these OCTE teachers at a higher rate of pay. KDE estimates that this increased rate of pay will increase its personnel costs by \$150,000.00 per year. The EPSB also anticipates that this amendment will result in OCTE teachers employed by local school districts also applying for a rank change. These local school districts will also be required to pay their OCTE teachers at a higher rate of pay. The total increase in personnel cost will vary by local school district. KDE estimates that this increased rate of pay will cost an average of \$3,500 per school district.

(b) On a continuing basis: The KDE anticipates that it will cost the KDE a total of \$60,000 per year after the first year in increased personnel costs. The cost from year to year, however, will depend on the total number of OCTE teachers entering the teaching field as an occupation-based career and technical education teacher. As stated above, the cost for local school districts with local Area Technology Centers will vary by district.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The

EPSB does not anticipate an additional fee or funding increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor does it indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is applied based on level of occupation-based experience and level of education.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact those entities that employ occupation-based career and technical education teachers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.1211 provides that the Education Professional Standards Board shall rank teachers. When determining ranks, KRS 161.1211 provides that the EPSB shall consider apprenticeship training and industrial experience.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There is no additional cost for the EPSB to administer this program.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost for the EPSB to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 8:020. Public and semipublic water systems; submetering; general provisions.

RELATES TO: KRS 211.350-211.392, 223.160-223.220, 224.10-100, 224.10-110, 224.16-050, 369, 40 C.F.R. 141, 142.14, 142.15, 142.16, 142.20, 142.21, 142.40-142.65

STATUTORY AUTHORITY: KRS 223.200, 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.3, 141.31, 141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, 42 U.S.C. 300f-300j-26

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the general provisions for regulating public and semipublic water supplies.

Section 1. A public or semipublic water system shall be subject to the requirements of 401 KAR Chapter 8, except those exempted in 40 C.F.R. 141 and 142[141-3].

Section 2. Submetering. (1) A property using submeters as

defined by 401 KAR 8:010(26) shall not be considered a public water system as defined by 40 C.F.R. 141.2 and, except for this administrative regulation and the emergency authority provisions established in Section 1431 of the federal Safe Drinking Water Act, shall be exempt from the requirements of 401 KAR Chapter 8.

(2)(a) A property using submeters as defined by 401 KAR 8:010(26) and exempt from the requirements of 401 KAR Chapter 8 shall:

1. Receive all of its water from a public water system and shall not change the quality of water provided to customers;

2. Be located on property owned by a single person, entity, individual, or a co-op or condominium association of property owners;

3. Not be regulated as a water utility by the Kentucky Public Service Commission; and

4. Not charge tenants an amount that exceeds tenants' share of the actual amount charged by the public water system to the owner or operator of a property using a submetered system, based on the tenants' actual water usage in proportion to the total amount of water used for the entire submetered property.

(b) The owner or operator of a property using a submetered system shall designate a person or organization as the owner or operator of the submetered system and shall provide the name, address, and phone number of the designated owner or operator upon request by the cabinet.

(c) The owner or operator of a property using a submetered system shall certify to the cabinet in writing that the:

1. Submetered system does not have any cross connections; and

2. Applicable provisions of 815 KAR 20:120 have been met.

(3) An advisory received by the owner or operator pursuant to Section 3(9) of this administrative regulation shall be disseminated to property tenants in the manner established in Section 3(10) of this administrative regulation.

(4) Public notices and consumer confidence reports received by the owner or operator pursuant to 401 KAR 8:075 shall be disseminated to property tenants in the next billing period.

Section 3[2]. (1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8 and 40 C.F.R. 141. A water supply system constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption from those standards in accordance with 40 C.F.R. 141.

(2)(a) A cross-connection shall be prohibited.

(b) The use of automatic devices, such as a reduced pressure zone back flow preventer and a vacuum breaker, may be approved to protect public health, in lieu of air gap separation.

(c) A combination of air gap separation and an automatic device shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health.

(d) Every public water system shall determine if or where a cross-connection exists and shall immediately eliminate it.

(3) A bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions for its use.

(4) An auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency condition that necessitates the intake.

(5) The plumbing system serving the purification plant and auxiliary facilities shall discharge to a sewer system if available.

(a) If a sewer is not available, the connection shall be made to a sewage disposal facility approved pursuant to KRS Chapter 211.350 through 211.392 or 224.16-050.

(b) There shall not be connections between the sewer system and a filter backwash, filter-to-waste drain, or clearwell overflow line, unless an air gap is provided between the drain and overflow

line and the sanitary storm sewer or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow line.

(6) The owner or operator of a public water system shall operate and maintain the facilities and systems of treatment, intake, and distribution to comply with the provisions of 401 KAR Chapter 8 ~~including:—Operation and maintenance includes~~ effective performance; preventive maintenance; operator staffing and training pursuant to 401 KAR 8:030, 11:040, and 11:050; establishing representative sample points that comply with the requirements of 401 KAR Chapter 8; and adequate process controls for testing, including quality assurance procedures.

(7) Reports to the cabinet.

(a) The supplier of water shall provide a complete monthly operating report to the cabinet, which shall be received at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month for which the report is filed.

1. A completed report shall include:

a. Volume of water treated;

b. Average number of hours per day water is being treated;

c.~~[b.]~~ Type and amount of chemicals added;

d.~~[c.]~~ Test results appropriate to be reported by the plant; and

e.~~[d.]~~ The dated original signature, or equivalent, pursuant to KRS Chapter 369, of the owner or authorized agent.

2. A supplier of water shall submit the reports required by 40 C.F.R. 141.75(b) to the cabinet not later than ten (10) days after the end of each month the public water system serves water to the public.

3. A public water system shall report to the cabinet in accordance with 40 C.F.R. 141.31.

(b) The public water system shall submit to the cabinet a completed Annual Water System Data form, DOW0801, (April 2017) not later than January 10 of each year.

(c) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours, by phone or in writing, the failure to comply with a monitoring requirement of 401 KAR Chapter 8 or any other provision of 401 KAR Chapter 8; ~~including the failure to comply with monitoring requirements.~~

(d)~~[c.]~~ Emergency reports.

1. If a public water system experiences a line break or loss of pressure as established in 401 KAR 8:150, Section 4(2)(e), loss of disinfection, or other event that may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water.

2. If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (800) 928-2380.

(8) Records to be maintained. An owner or operator of a public water system shall keep the records established in 40 C.F.R. 141.33 on the premises or readily accessible to cabinet staff inspecting the system.

(9) Boil water and consumer advisories.

(a) Boil water advisories.

1. A public water system or semipublic water system shall issue a boil water advisory if the system believes an advisory is warranted.

2. The cabinet may direct that a boil water advisory be issued upon:

a. The reception of confirmed positive bacteriological results, for example, including E. coli or fecal coliform, in at least one (1) sample; or

b. Other circumstances that warrant an advisory for the protection of public health.

3. The cabinet may, if circumstances warrant for the protection of public health, issue a boil water advisory directly, rather than rely on a public or semipublic water system to issue the advisory.

4. A boil water advisory shall remain in effect until the cabinet approves the lifting of the advisory based on bacteriological results showing coliform bacteria are not present in the water.

(b) Consumer advisory.

1. The cabinet may issue a consumer advisory if:

a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or

b. Other information of interest to the consumer exists.

2. The advisory shall notify affected persons of a required or recommended action.

(c) A public or semipublic water system shall:

1. Immediately notify the local health department that serves the area affected if a boil water advisory or consumer advisory is issued.

a. The notification may be made by telephone, email, or fax machine for an occurrence during normal business hours.

b. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or

2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department if the system issues a boil water advisory or consumer advisory. The protocol shall address:

a. For which types of advisories the system shall notify the affected health department;

b. What procedures shall be used to notify and under what circumstances;

c. How soon after the occurrence the notification shall be made; and

d. To whom the notification shall be made, during and after business hours.

(10) How to issue an advisory.

(a) A boil water advisory or consumer advisory shall be issued through newspapers, radio, television, or other media having an immediate public impact.

(b) As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that maintain public awareness.

(c)1. The advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem.

2. Boiling instructions shall caution to boil water to be used for consumption by boiling the water for at least three (3) minutes at a rolling boil.

(11) Maps.

(a) A public or semipublic water system shall have on the premises, or readily accessible to cabinet staff inspecting the system, an up-to-date map of the distribution system. The map shall, at a minimum, show:

1. Line size;

2. Cutoff valves;

3. Fire hydrants;

4. Flush hydrants;

5. Tanks;

6. Booster pumps;

7. Chlorination stations;

8. Connection to emergency or alternative sources;

9. Wholesale customer master meters; and

10. Type of piping material in the distribution system and its location.

(b)1. If a public water system is not able to comply with the requirements of paragraph (a) of this subsection, the system may petition the cabinet to modify this requirement.

2. The petition for modification shall state specifically what portion of the requirements of paragraph (a) of this subsection is not practical and why.

(12) Operation and maintenance manual.

(a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:

1. A detailed design of the plant;

2. Daily operating procedures;

3. A schedule of testing requirements designating who is responsible for the tests;~~and~~

4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility; ~~and~~

5. Procedures for issuing a boil water advisory and consumer advisory as established in this administrative regulation, including notification to the public and local health department and consumers.

(b) The operation and maintenance manual shall be updated as necessary, but not less than annually, and shall be available for inspection by the cabinet.

(c) ~~A~~ public water ~~system~~~~systems~~ serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive the requirements of paragraphs (a) and (b) of this subsection. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(13) ~~Flushing~~~~recommended~~. Each community water system shall establish and maintain a flushing program that ensures:

(a) ~~Dead end and low usage mains are flushed periodically;~~

(b) ~~Drinking water standards are met;~~~~and~~

(c) ~~Sediment and air are removed~~~~removal~~; ~~and~~

(d) Disinfectant residuals established in 401 KAR 8:150, Section 1 are maintained. ~~[(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.~~

1. ~~Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.~~

2. ~~Flushing shall continue at each hydrant until all traces of turbidity and color are gone.~~

3. ~~Hydrants shall be opened and shut slowly to prevent damage from water hammer.~~

(b) ~~In addition to the regularly scheduled flushing, the following conditions shall indicate a need to flush the entire system:~~

1. ~~Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system;~~

2. ~~An inability to maintain an adequate residual of a disinfection agent in any part of the system; or~~

3. ~~A heterotrophic plate count, or HPC, in excess of 500.~~

(c) ~~Other indicators that flushing may be necessary shall be taste and odor complaints, color of water, contaminated water samples, or line repairs.]~~

(14) A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known.

(15) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as ~~established~~~~prescribed~~ in 401 KAR 8:040, except that measurements for turbidity, disinfectant residuals, and other parameters ~~established~~~~specified~~ by 40 C.F.R. 141.28 and 141.131 may be performed by a certified operator or an individual under the supervision of a certified operator.

(16) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine ~~if~~~~whether~~ the supplies have acted or are acting in compliance with applicable laws or regulations that the cabinet has the authority to enforce.

(a) Entry may include, ~~for example~~, collection of water samples for laboratory analyses and inspection of records, files, papers, processes, controls, and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.

(b) The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(17)~~Recommended practices for water supply reservoirs to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:~~

(a) ~~Prohibition of swimming, water skiing, and other contact~~

~~sports;~~

(b) ~~Prohibition of large motor-driven craft or any craft with toilets;~~

(c) ~~A requirement that an area at least 100 feet wide from the upper pool elevation be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;~~

(d) ~~Prohibition of effluent from sewage treatment plants being discharged into the lake;~~

(e) ~~Picnicking may be permitted around the lake if plans for the development of a picnic area meet regulatory requirements of the cabinet; and~~

(f) ~~Implementation of a nonpoint source pollution control plan.~~

(18)~~[(19)]~~ Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, may be used by a water system if they meet the requirements established in the Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works, 2012.

(18)~~[(19)]~~ Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired, or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10:031.

(19)~~[(20)]~~ Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

Section 4[3]. The cabinet shall maintain records and submit reports as established in 40 C.F.R. 142.14, 142.15, and 142.16(f).

Section 5[4]. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 only in accordance with 40 C.F.R. 141.4.

Section 6[5]. A public water system may use noncentralized treatment devices only in accordance with 40 C.F.R. 141.100 or bottled water only in accordance with 40 C.F.R.[141, Sections] 141.101.

Section 7[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Water Works, 2012 Edition[2003]," A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, 2012; and~~is incorporated by reference.~~

(b) "Annual Water System Data" form, DOW0801, (April 2017).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available the division's Web site at <http://water.ky.gov>.

(3) The "Recommended Standards for Water Works, 2012 Edition," A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, 2012, may also be obtained at <http://10statesstandards.com/waterrev2012.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: July 6, 2017 at 11 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides general provisions for the regulation of public and semipublic water systems.

(b) The necessity of this administrative regulation: This administrative regulation provides a general framework for public water systems to protect public health, including treatment, reporting, and recordkeeping requirements. All states with primary authority to implement and enforce the Safe Drinking Water Act must have regulations compatible with the federal program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to regulate public and semipublic water systems. 40 C.F.R. 141 and 142 provide a portion of the regulatory framework to administer the federal Safe Drinking Water Act (42 U.S.C. 300f-300j-26).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides public water systems with a general framework for treating water to protect public health.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments preserve the emergency authority of the cabinet and the EPA contained in Section 1431 of the federal Safe Drinking Water Act, and clarify that air and sediment removal during line flushing are not required by 401 KAR 8:150 which was an inadvertent error in the original regulation.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify roles and responsibilities regarding public and semipublic water systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to regulate public and semipublic water systems.

(d) How the amendment will assist in the effective administration of the statutes: The amendments preserve the emergency authority of the cabinet and the EPA contained in Section 1431 of the federal Safe Drinking Water Act, and clarify that air and sediment removal during line flushing are not required by 401 KAR 8:150 which was an inadvertent error in the original regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The types of businesses that may use submetering are multi-unit apartment dwellings, mobile home parks, and condo and home owners associations. The number of submetered systems is unknown. There are 436 public water systems, and 52 semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public water systems will need to establish a flushing program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Public water systems that do not already have an established flushing program may incur costs in the design and implementation of a flushing program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will have the flexibility to establish flushing programs that meet the needs of its system and customers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional costs to the Division of

Water.

(b) On a continuing basis: There will be no additional costs to the Division of Water.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Water uses federal funds to administer the federal Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Yes. This regulation is tiered by distinguishing between public, semipublic, and non-regulated water systems.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are 436 public water systems, and 52 semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 and 224.10-100 authorize the cabinet to regulate public and semipublic water systems. C.F.R. 141 and 142 are promulgated by the U.S. EPA pursuant to the Safe Drinking Water Act.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? Public water systems that currently do not have a flushing program may incur costs to design and implement a flushing program.

(d) How much will it cost to administer this program for subsequent years? Once public water systems have established a flushing program, additional continuing costs should be minimal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The number of public water systems that do not have a current flushing program cannot reasonably be determined, therefore, the cabinet is unable to calculate cost estimates.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), 40 C.F.R. 141 and 142. There is no federal mandate regarding flushing programs.

2. State compliance standards. KRS 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141 and 142 contain the national primary drinking water regulations and standards for implementation of the

federal Safe Drinking Water Act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes. Portions of this regulation are promulgated under KRS 224.10-110 and 224.10-100. These requirements are for general operation and maintenance that have no federal counterpart and are intended to protect public health.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements in this regulation were promulgated under state law and most were in place prior to the Safe Drinking Water Act. Flushing programs are designed to protect public health.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)**

401 KAR 8:075. Consumer confidence reports and public notification.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.151-141.155, 42 U.S.C. 300f-300j-26[~~EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110, 40 C.F.R. 141.151-141.155, 141.201-141.211, Appendix A, Appendix B, Appendix C, 42 U.S.C. 300f-300j-26[~~EO 2008-507, 2008-531~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) and (3) require the secretary of the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation establishes the requirements for consumer confidence reports and notification of the public if a public water system violates a provision of this administrative regulation. This administrative regulation establishes requirements more stringent than[~~different from~~] the federal regulation for submitting consumer confidence reports and certifications to the cabinet in enforceable timeframes. The federal regulation requires a consumer confidence report[~~reports~~] to be certified within three (3) months after it is mailed to the cabinet[~~at the same time the report is delivered to the customers, and the certification is required to be submitted to the cabinet within three (3) months~~]. This administrative regulation requires that the report and certification be delivered to the cabinet by July 1 of each year.

Section 1. Consumer Confidence Reports. (1) A community water system shall submit an annual consumer confidence report to its customers and to the cabinet in accordance with 40 C.F.R. 141 Subpart O, 141.151, 141.152, 141.153, 141.155, including Appendix A, and 141.154, except as established[~~provided~~] in subsection (2) of this section.

(2) A copy of the annual report[~~and certification~~] required by 40 C.F.R. 141.155 shall be delivered to the cabinet and the system's customers by July 1 each year.

(3) The certification required by 40 C.F.R. 141.155 shall be delivered to the cabinet by July 1 each year.

Section 2. Public Notification. The owner or operator of a public water system shall give public notice as established in 40 C.F.R. Subpart Q, 141.201 through 141.211, Appendix A, Appendix B, and Appendix C.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: July 6, 2017 at 11 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-

9003,

email: water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires public water systems to annually report to its customers information on the quality and nature of the water that the system is delivering to customers and the system's compliance with national primary drinking water regulations. This administrative regulation also requires public water systems to provide notice of a violation to the public in accordance with 40 C.F.R. 141.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require public water systems to keep customers informed of issues related to the quality and nature of the water that customers are receiving, and to require notice to customers if the system violates drinking water standards. All states with delegated authority to implement and enforce the federal Safe Drinking Water Act must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use. 40 C.F.R. 141 requires public water systems to provide reports regarding the quality and nature of the water it is delivering to its consumers, and to provide public notice of drinking water standard violations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires public water systems to provide consumer reports regarding the quality and nature of the water it delivers to its consumers, and public notice when drinking water standards are violated.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that public water systems shall deliver the annual report to the cabinet and the system customers, and the certification only to the cabinet, by July 1 each year as established in 40 C.F.R. 141.155.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies the responsibilities established in 40 C.F.R. 141.155 by removing an inadvertent error in the original regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 40 C.F.R. 141.155 requires the certification to be sent only to the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the responsibilities established in 40 C.F.R. 141.155.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 436 public water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be required to take any additional actions to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will have consistent state and federal regulations regarding consumer

confidence reports and public notice of drinking water violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment will not result in further costs.

(b) On a continuing basis: This amendment will not result in further costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in funding to implement or enforce this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Yes. The requirements of this administrative regulation differ based on the number of persons served by a public water system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to 436 public water systems in Kentucky, which are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 40 C.F.R. 141, 42 U.S.C. 300f through 300j-26.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? This amendment will not result in any additional costs.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in any additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This amendment will not result in any additional revenues or expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141 and 42 U.S.C. 300f through 300j-26

2. State compliance standards. KRS 224.10-100 and 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141.155 requires that the annual report be delivered to customers and the state by July 1 each year, and requires the certification to be delivered only to the state within three (3) months of the annual report.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements than those required by the federal mandate? 40 C.F.R. 141.155 requires consumer confidence reports to be certified within three (3) months after being mailed to the primacy agency. This administrative regulation requires that the report and certification be delivered to the cabinet by July 1 of each year. The requirements are clerical in nature and the cabinet considers the requirement that certification be received in the same time period to be reasonable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter standards or additional or different responsibilities or requirements. The provisions related to the certification of consumer confidence reports to the cabinet are more stringent to ensure the reports are correctly distributed to the system's customers, and establishes the information regarding total organic compounds that must be included. This information was not addressed by the U.S. EPA in its regulation. These requirements are clerical in nature and do not impose a financial burden on the systems.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, KRS 224.10-420, 224.10-440, 224.43-310(5), 224.43-315, 224.43-340[(2), (8), (9)], 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340(1) authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes[sets forth] general requirements and procedures for submittal, processing, and amending of area solid waste management plans.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as "the plan," shall contain the information as established[specified] in KRS 224.43-345.

(2) The plan shall be prepared and formatted in accordance with the ~~[document entitled]~~ Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update~~[]~~, DEP ~~[Form]~~ 6062~~[(February 2004)]~~.

Section 2. Public Information Procedures. (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to ~~its~~ submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice by the governing body. The public notice shall ~~[in accordance with subsection (3) of this section]~~.

~~(3) A public notice shall be published by the governing body that meets the following requirements:~~

~~(a)[The public notice shall] Be of a size to include not less than two (2) column widths and shall be in a display format;~~

~~(b)[The public notice shall] Be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and~~

~~(c)[The public notice shall] Include a description of:~~

~~1. The proposed action;~~

~~2.[.] Location where the plan may be reviewed;~~

~~3.[.] Procedures for submitting comments;[.] and~~

~~4. Location of the public hearing, if a hearing is requested.~~

(3)[(4)] The governing body shall hold a public hearing if, a hearing is requested, during the public comment period[,-one is

requested].

(a) The hearing shall be held within fifteen (15) days of the close of the public comment period[~~, with at least seven (7) days public notice~~].

(b) The public notice for a hearing shall be published at least seven (7) days prior to the hearing in accordance with subsection ~~(2)(b)(3)~~ of this section.

(c) The hearing may occur in conjunction with the governing body's normally scheduled official meeting.

~~(4)(5)~~ The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period.

(a) The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public.

(b) The notice shall state where copies of the response are maintained and how it may be obtained.

(c) The governing body shall ~~also~~ mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted no later than the deadlines ~~established~~specified in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area.

(2) ~~The original and one (1) copy of the~~ plan shall be sent to the ~~cabinet[supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601]~~.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet disapproves a plan, the cabinet shall notify the governing body in writing of each deficiency with the plan.

(a) The governing body shall have up to ninety (90) days from the date of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The time elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline ~~established~~specified in KRS 224.43-345(2).

(b) The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period.

(c) The cabinet may require the governing body to repeat the public information process ~~established in~~described in Section 2 of this administrative regulation for any plans significantly modified during the review process.

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies ~~[within time frames specified by the cabinet]~~, or fails to amend a plan in accordance with ~~[Section 4 of]~~ this administrative regulation, the cabinet shall take appropriate action, which may include~~take~~ one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to KRS 224.10-420 and 224.10-440~~[401 KAR Chapter 40]~~;

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded ~~pursuant to~~under KRS 224.43-505; and

(c) Prepare a plan for the governing body, conduct the public information procedure ~~established~~specified in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is

inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2)~~(a)~~ If the cabinet makes a determination that an amendment to a plan is necessary ~~pursuant to~~under subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes.

(b) The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, the governing body~~it~~ shall prepare and submit to the cabinet a request to amend that contains the~~following~~:

1. Name of the county or area that intends to amend the~~its~~ plan;

2. Name and address of the governing body;

3. Name, address, and phone number of a contact person;

4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and

5. A written~~description outlining the~~ justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b)1. The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine ~~if whether~~ a plan amendment is necessary as established in subsection (2)(a) of this section. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required.

2. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with the amendment process~~amending its plan~~ in accordance with subsections (4) and (5) of this section.

(4)(a) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2 of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error;~~;~~

2. Correct a typographical error;

3. Change the name, address, or phone number of a person identified in the plan;

4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or

5. Make similar minor administrative changes.

(b) Solid waste plan amendments ~~that~~which require the governing body to undertake the public information process ~~established~~described in Section 2 of this administrative regulation, shall include any solid waste plan amendment that:

1. Increases fees to the public;

2. Diminishes services to the public;

3. Closes a solid waste facility;

4. Establishes a new solid waste facility;

5. Expands the size or capacity of an existing facility;~~or~~

6. Changes the location of a solid waste facility or;

7. Other similar changes to facilities or services that affect the public.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit ~~the following~~ to the cabinet:

(a) A copy~~Two (2) copies~~ of each page of the plan that is being amended;

(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;

(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if

required;

(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;

(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and

(g) Upon request, additional documentation necessary for the cabinet to determine that the plan amendment process procedure was properly followed~~[Any other supporting documentation as required by the cabinet]~~.

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reapproval of an updated plan on or before October 1, 2007, and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet pursuant to KRS 224.43-345.

(2) If a governing body fails to implement an approved plan, the cabinet:

(a) Shall not endorse projects that generate solid waste pursuant to~~[under]~~ the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan;

(b) May withhold any grants, loans or other monies for any grant applicant~~[the area and the counties and cities]~~ located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded pursuant to~~[under]~~ KRS 224.43-505, until the governing body is in compliance with the governing body's~~[the]~~ plan; and

(c) May initiate enforcement proceedings against the governing body. Enforcement proceedings shall be pursuant to KRS 224.10-420 and 224.10-440~~[224.99-010 and 224.99-020]~~.

Section 7. Annual Reports. (1) The annual report, established~~[specified]~~ in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area. The ~~[original and one (1) copy of the]~~ report shall be sent to the cabinet ~~[supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601]~~.

(2) The annual report shall be prepared and formatted using the [Solid Waste Management Area Annual Report~~[Form]]~~, DEP [Form] 6061~~[(February 2004), incorporated by reference in Section 8 of this administrative regulation. This form shall be effective January 1, 2005, for the annual report covering calendar year 2005]~~.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidance for Preparing a~~[an]~~ Area Solid Waste Management Area Plan 5-Year Update", DEP 6062, March 2017~~[November 2016]~~; and

(b) "Solid Waste Management Area Annual Report [Form]", DEP 6061, July~~[March]~~ 2017~~[November 2016]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, ~~[(502) 564-6716]~~, Monday through Friday, 8:00~~[8]~~ a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 12, 2017 at 2 p.m.

CONTACT PERSON: Michelle Mitchell, Internal Policy Analyst, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6713, fax (502) 564-4245, email MichelleM.Mitchell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Mitchell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth specific requirements and procedures for submittal, processing, and amending of area solid waste management plans and annual reports.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the requirements of KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides procedures to the solid waste management areas on updating solid waste management plans and submitting annual reports, required by KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the procedures for the preparation, submittal, processing and amending of area solid waste management plan updates. This administrative regulation also provides the annual report requirements to solid waste management areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the revision date on DEP 6061, "Solid Waste Management Area Annual Report", from March 2017 to July 2017. On DEP 6061, Section 13, titled "Solid Waste Management Expenditures" has been removed as it was redundant and unnecessary. This form is incorporated by reference in Section 8(1)(b) of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is to eliminate redundancy and update the revision date on DEP 6061, "Solid Waste Management Area Annual Report".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by revising the annual report form for the administration of KRS 224.43-345 and KRS 224.43-340.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist counties or solid waste management areas in reporting to the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The counties, urban-county governments and solid waste management areas will be required to report information on the revised annual report form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The counties and cities will have

less paperwork to complete for the annual report as redundancy was eliminated.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(b) On a continuing basis: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky PRIDE Fund will be the source of funding for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation or amendment. All applicants applying for grant monies are to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation relates to the solid waste management area governing body, responsible for the area solid waste management plan updates and annual reports, required by KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or for local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or for local governments.

(c) How much will it cost to administer this program for the first year? The cost to administer the Recycling and Local Assistance Program is \$687,441.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Recycling and Local Assistance Program is \$687,441 annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it sets forth general requirements and procedures for submittal, processing and amending of area solid waste management plans.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.100, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", July 12[May 15], 2017[October 15, 2015], is incorporated by reference and includes the following:

- 600 Definitions (Amended 7/12/17[5/15/17] [7/01/15]);
- 601 Initial Contact & Court Support for Public Offenders (Amended 5/15/17[10/15/15]);
- 601.1 Initial Contact & Court Support for Youthful Offenders (Amended 7/12/17[5/15/17] [7/01/15]);
- 601.2 Case Management Screens and Assessments (Amended 5/15/17 [Added 10/15/15]);
- 602 Individual Client Record (Amended 7/12/17[5/15/17] [10/15/15]);
- 603 Service Complaints (Amended 10/15/15);
- 604 Case Planning and Participation in Treatment Planning (Amended 7/12/17[5/15/17] [10/15/15]);
- 605 Community Supervision (Amended 5/15/17 [10/15/15]);
- 606 Probation of Public Offenders (Amended 5/15/17 [10/15/15]);
- 607 Commitment of Public Offenders (Amended 5/15/17 [10/15/15]);
- 608 Drug Screening and Confirmation Testing (Amended 7/01/15 [5/15/17] [7/01/15]);
- 609 Youth's Benefits (Amended 5/15/17 [7/01/15]);
- 609.1 Title IV-E Federal Foster Care Maintenance Payments (Amended 5/15/17 [7/01/15]);
- 609.2 Trust Funds (Amended 7/01/15);
- 610 Transportation of Committed Youth (Amended 7/01/15);
- 610.1 Out-of-State and Out-of-Country Travel (Amended 5/15/17 [10/15/15]);
- 611 Electronic Monitoring (Amended 5/15/17 [7/01/15]);
- 612 Authorized Leave for Public Offenders, Juvenile Sexual Offenders, and Youthful Offenders in Placement (Amended 10/15/15);
- 613 Supervised Placement Revocation (Amended 7/01/15);
- 615 Juvenile Intensive Supervision Team (JIST) (Amended 7/01/15);
- 616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 7/12/17[5/15/17] [7/01/15]);
- 616.1 Probation of Youthful Offenders (Amended 5/15/17 [7/01/15]);
- 616.2 Parole of Youthful Offenders (Amended 7/01/15);
- 617 Incident Reports (Amended 7/12/17[5/15/17] [7/01/15]);
- 618 AWOL or Escape (Amended 5/15/17 [7/01/15]);
- 620 Use of Self-Protection Skills (Amended 10/15/15);
- 621 Mental or Behavioral Health Services, Referrals, and Psychiatric Hospitalization (Amended 10/15/15);
- 622 Community Mental Health Operations (Amended 5/15/17 [10/15/15]); and
- 623 Health and Safety for Community and Mental Health Services (Amended 7/01/15).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 12, 2017 at 2 p.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652, 15A.067, 605.150, and 635.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice in to compliance to reflect actual practice of the agency, such as, the change in the Department's criminogenic needs assessment from the Case Management Needs Assessment to the Criminogenic Needs Questionnaire which will allow for the specific targeting of criminogenic needs in case planning and treatment planning utilizing evidence-based practices in an effort to reduce recidivism.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652, 15A.067, 605.150, and 635.095.

(c) How the amendment conforms to the content of the authorizing statutes: The policy revisions update the practices or procedures to ensure youth committed or probated to the Department of Juvenile Justice are properly served. Revises guidance and uses of treatment needs identification tools for supervision and commitment and responsibilities of community and mental health staff.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1,100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently. Policy amendments will ensure that youth are placed and supervised in the least restrictive placement based on their assessed risk and

treatment needs, and to provide staff a clearer understanding of the use of treatment needs identification tools and the use of Evidence-Based Practices.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Community staff will administer a risk and needs assessment on all adjudicated youth. Agency employees will provide services to the youth in the community and all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions are estimated as follows: Training Costs: Approximately \$5,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth shall receive services more effectively and efficiently. DJJ employees and visitors and volunteers will more clearly and concisely understand the services to be provided by Department of Juvenile Justice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Approximately \$5,000 for staff training

(b) On a continuing basis: Approximately \$5,000 for annual staff training

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.060, 635.095, 635.100, 640.120, and 645.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures shall be for initial staff training of \$5,000 and \$5,000 for annual training thereafter.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Response: None.

(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only

impact the Department of Juvenile Justice. The anticipated expenditures shall be for initial staff training of \$5,000 and \$5,000 for annual training thereafter.

(d) How much will it cost to administer this program for subsequent years? Response: The anticipated expenditures shall be for initial staff training of \$5,000 and \$5,000 for annual training thereafter.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

**PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Health and Life Division
(Amended After Comments)**

806 KAR 17:575. Pharmacy Benefit Managers.

RELATES TO: KRS 304.1-050, 304.17A-162

STATUTORY AUTHORITY: KRS 304.2-110, 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner may make reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-162 requires the department to promulgate administrative regulations establishing the manner in which a pharmacy benefit manager shall respond to an appeal regarding maximum allowable cost pricing, the manner in which a pharmacy benefit manager makes available to contracted pharmacies information regarding sources for drug price data, a comprehensive list of drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug, and weekly updates to the list. KRS 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162 together provide[provider] authority for the department's regulation of pharmacy benefit managers and the specific maximum allowable cost pricing and appeal process set forth [considered] in this administrative regulation. This administrative regulation establishes the process[requirements] for a pharmacy benefit manager's maximum allowable cost appeals process, the process for the department's[Department's] review of a complaint associated with a maximum allowable cost appeal, and the requirements for the cost listings made available by a pharmacy benefit manager.

Section 1. Definitions. (1) "Contracted pharmacy" or "pharmacy" is defined by KRS 304.17A-161(1).

(2)[(4)] "Department" is defined by KRS 304.1-050(2).

(3)[(2)] "Maximum Allowable Cost" is defined by KRS 304.17A-161(3).

(4)[(3)] "Pharmacy Benefit Manager" is defined by KRS 304.17A-161(4)[KRS 304.9-020(15)].

Section 2. Maximum Allowable Cost Pricing Appeal Process.

(1) A pharmacy benefit manager shall establish a maximum allowable cost pricing appeal process where a contracted pharmacy or the pharmacy's designee may appeal if:

(a) The maximum allowable cost established for a drug reimbursement is below the cost at which the drug is available for purchase by pharmacists and pharmacies in Kentucky from national or regional wholesalers licensed in Kentucky by the Kentucky Board of Pharmacy; or

(b) The pharmacy benefit manager has placed a drug on the maximum allowable cost list in violation of KRS 304.17A-162(8).

(2) The pharmacy benefit manager's appeal process shall

include the following:

(a) The pharmacy benefit manager shall accept an appeal by a contracted pharmacy on or before[within] sixty (60) days of the initial claim;

(b) Notification to the appealing party that the appeal has been received, and[of] the names, addresses, email addresses, and telephone numbers of the pharmacy benefit manager's contact persons for questions regarding the maximum allowable cost appeal process; and

(c) A provision allowing a contracted pharmacy, pharmacy service administration organization or group purchasing organization, to initiate the appeal process, regardless if an appeal has previously been submitted[received] by a pharmacy or the pharmacy's designee outside of Kentucky, by contacting the pharmacy benefit manager's designated contact person electronically, by mail, or telephone. If the appeal process is initiated by telephone, the appealing party shall follow up with a written request within three (3) days.

(3) The pharmacy benefit manager's maximum allowable cost pricing appeal process shall be readily accessible to contracted pharmacies electronically through publication on the pharmacy benefit manager's website, and in either the contracted pharmacy's contract with the pharmacy benefit manager or through a pharmacy provider manual distributed to contracted pharmacies, pharmacy service administration organizations, and group purchasing organizations.

(4) For an appeal received from a pharmacy services administration organization or a group purchasing organization related to a dispute regarding maximum allowable cost pricing, a pharmacy benefit manager may request documentation that the pharmacy services administration organization or group purchasing organization is acting on behalf of a contracted pharmacy before responding to the appeal.

(5) The pharmacy benefit manager shall investigate, resolve, and respond to the appeal within ten (10) calendar days of receipt of the appeal. Upon resolution, the pharmacy benefit manager[manager's] shall issue a written response to the appealing party that shall include the following:

(a) The date of the decision;

(b) The name, phone number, mailing address, email address, and title of the person making the decision; and

(c) A statement setting forth the specific reason for the decision, including:

1. If the appeal is granted:

(i) The amount of the adjustment to be paid retroactive to the initial date of service[the initial claim] to the appealing pharmacy; [(b) The date such payment will occur;]

[(ii)[(e)]] The drug name, national drug code, and prescription number of the appealed drug; and

[(iii)[(d)]] The appeal number assigned by the pharmacy benefit manager, if applicable; or

2. If the appeal is denied:

(i) The national drug code or the national drug code of a therapeutically equivalent drug as defined in KRS 304.17A-162(9) [an alternative national drug code] of the same dosage, dosage form, and[,] strength[, and quantity] of the appealed drug; and

(ii) The Kentucky licensed wholesaler offering the drug at or below maximum allowable cost on the date of fill; and

(e) The price offered by the Kentucky licensed wholesaler on the date of fill;]

(6) When a pharmacy benefit manager grants an appeal for which a price update is warranted in accordance with KRS 304.17A-162(2), the pharmacy benefit manager shall individually notify contracted pharmacies of the date of the granted appeal, the appealed drug, initial date of service, national drug code, generic code number, applicable information to identify the health benefit plan, and retroactive price update by the time of release of the next scheduled maximum allowable cost update following the appeal decision by:

(a) Mail Courier [United States mail];

(b) Electronic mail;

(c) Facsimile; or

(d) Web portal posting for sixty (60) days ~~and~~[with] corresponding electronic communication to a contracted pharmacy ~~with hyperlink to the portal for the granted~~[alerting that an] appeal~~[has been granted]~~. A pharmacy benefit manager shall include in the beginning and upon renewal of the contract with a pharmacy or the pharmacy's representative, notice, and instructions for how to access and use the web portal.

(7) All contracted pharmacies permitted to reverse and resubmit claims following a granted appeal pursuant to KRS 304.17A-162(2) shall submit claims to the pharmacy benefit manager within sixty (60) days of notification that~~[the date]~~ the appeal was granted.

(8) A pharmacy benefit manager shall submit the maximum allowable cost pricing appeal process and a template response satisfying the requirements of subsection (5) of this section to the department for review and approval.

Section 3. Department Review of Maximum Allowable Cost Pricing Appeal. (1) A contracted pharmacy or the pharmacy's designee may file a complaint following a final decision of the pharmacy benefit manager to the department in accordance with KRS 304.2-160 and 304.2-165.

(2) A complaint shall be submitted to the department no later than thirty (30) calendar days from the date of the pharmacy benefit manager's final decision.

(3) The department shall be entitled to request additional information necessary to resolve a complaint from any party in accordance with KRS 304.2-165 and 304.17A-162(5).

Section 4. Maximum allowable cost list availability and format.

(1) The pharmacy benefit manager shall make available to the contracted pharmacy a comprehensive list of drugs subject to maximum allowable cost pricing.

(2) The comprehensive maximum allowable cost pricing list shall:

(a) Be a complete listing by drug in an electronically accessible format, unless, upon a pharmacy's written request the list be provided in a paper or other agreed format within two (2) business days ~~[twenty-four (24) hours]~~ upon receiving the necessary information required for each list requested~~[of receipt of the request]~~;

(b) Identify the applicable health plan for which the pricing is applicable;

(c) Be electronically searchable and sortable by individual drug name, national drug code, and ~~generic code number~~[drug classification];

(d) Contain data elements including the drug name, national drug code, ~~[package size]~~, per unit price, and strength of drug;

(e) List a specific maximum allowable cost for each drug that will be reimbursed by the pharmacy benefit manager;

(f) Provide the effective date for that maximum allowable cost price; and

(g) Provide the date the maximum allowable cost list was updated.

(3) The pharmacy benefit manager shall retain in accordance with subsection (2)(a) of this section historical pricing data for a minimum of 120~~[sixty (60)]~~ days.

Section 5. Weekly Updates to Maximum Allowable Cost Price List. (1) Pharmacy benefit managers shall ~~send~~[make available] to all contracted pharmacies one (1) weekly update to the maximum allowable cost list~~[updates to the list of drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug]~~.

(2) The weekly update~~[updates]~~ shall include the information below for all drugs added, removed, or changed in price since the last weekly update:

(a) Be in an electronically accessible format, unless, upon written request by the pharmacy the update be provided in paper or other agreed format within twenty-four (24) hours of receipt of the request from the contracted pharmacy;

(b) Identify the basis for each drug's inclusion on the update;

(c) If a drug is added to the maximum allowable cost list, the

maximum allowable cost price shall be indicated;

(d) Identify all drugs removed from the maximum allowable cost list;

(e) If a change in the maximum allowable cost price is made, include the old price, and new price~~[, and percentage difference]~~; ~~[and]~~

(f) Identify the drug name, national drug code, generic code number, and the applicable health benefit plan information; and

~~[(g) Identify the effective date of the change. [(3) If a pharmacy benefit manager updates the manager's comprehensive list required under Section 4 of this administrative regulation on a weekly basis, and includes all of the elements set forth in subsection (2) of this section, then a pharmacy benefit manager is not required to publish a separate weekly update.]~~

Section 6. Data Source Availability. Each pharmacy benefit manager shall identify electronically or within contracts to all contracted pharmacies the national drug pricing compendia or sources used to obtain drug price data for those drugs subject to maximum allowable cost provisions. If any changes are made to the data sources following the execution of a contract, the pharmacy benefit manager shall individually notify the contracted pharmacies of the changes either through correspondence submitted electronically, facsimile, or mail courier~~[US mail]~~.

Section 7. Annual report. All pharmacy benefit managers licensed to do business in Kentucky shall transmit at least annually by March 31 to the department a Pharmacy Benefit Manager Annual Report.

Section 8. Incorporation by reference. (1) "Pharmacy Benefit Manager Annual Report," June 2017~~[April 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

CONTACT PERSON: Patrick D. O'Connor II, Executive Advisor, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation expounds upon the Department of Insurance's oversight of the relationship between a pharmacy and pharmacy benefit manager as directed by KRS 304.17A-162. First, the administrative regulation provides further detail on the required internal and external complaint processes for pharmacy benefit managers. These appeals are available to pharmacists contesting the amount of a pharmacy benefit manager's maximum allowable cost payments received for prescriptions. The regulation sufficiently narrows the scope of the Department's review in the appeal process to ensure the pharmacy benefit manager has applied the appropriate standards required pursuant to KRS 304.17A-162, while affording the entities the freedom to contract for pricing. Secondly, the administrative regulation describes the maximum allowable cost prescription list and format, and the weekly updates required of the pharmacy benefit manager to provide an easily accessible and searchable list to ensure pharmacies are informed of prescription pricing reimbursements. Lastly, the administrative regulation requires a pharmacy benefit manager to provide the Department annual reports to allow for the identification of any issues in this specific process and determine any necessary Department action.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to implement the statutory mandates of KRS 304.17A-162 and to increase transparency in the prescription pricing and reimbursement process to prevent potential abuse.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-162 requires the Department to promulgate administrative regulations concerning specific aspects of the relationship between a pharmacy and a pharmacy benefit manager. The administrative regulation considers those specific mandates of the statutes and is narrowly tailored to conform to the legislature's directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation clarifies the scope of the Department's review of maximum allowable cost prescription appeals. It also provides a reporting obligation on behalf of pharmacy benefit managers to allow the Department to efficiently oversee pharmacy benefit managers and identify any areas of concern.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pharmacies, pharmacy benefit managers, and insurers operating within the Commonwealth of Kentucky will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements imposed upon each of the entities are similar to existing requirements already found in other states. Specifically, numerous states have passed nearly identical provisions regarding weekly updates of maximum allowable cost price lists and a process whereby pharmacies can appeal pricing issues. To comply with these Kentucky specific provisions, the pharmacy benefit managers will need to configure their operating systems in such a manner to allow pharmacies sufficient access to their maximum allowable cost price lists and weekly updates with the required information, which is basic in nature. Pharmacy benefit managers will also need to modify their appeals process according to these regulatory provisions. Pharmacy benefit managers, at a minimum, will adjust the specificity of the information provided to pharmacies for denied appeals and provide individual notification to all impacted pharmacies when a warranted price update follows a granted appeal. Lastly, pharmacy benefit managers will be required to maintain appeal data used in generating the annual reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The requirements established in this regulation are very similar to requirements already established in other states. The Department has worked with the regulated entities since the passage of KRS 304.17A-162 to develop these changes. Therefore, the cost of compliance is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit from greater transparency in the prescription pricing process and the adoption of an official appeal process, with Department oversight, that will prevent parties from taking advantage of each other's position.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Department may incur costs in the event

excessive complaints are submitted and the development of software is necessary to capture and retain the appeal information. Currently, existing staff members in the Consumer Protection Division are handling the investigation and determination of complaints within their normal duties.

(b) On a continuing basis: The Consumer Protection Division will continue to handle complaints submitted. The Department anticipates over time the complaints submitted will diminish as the parties understand and implement the required system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensing fees generated will cover a portion of the cost, and the Department remains capable of assessing additional fees pursuant to KRS 304.9-054.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department anticipates an increase in the number of appeals from pharmacists received by the Consumer Protection Division once the regulation is finalized. However, following a period of adjustment, the Department anticipates the appeals will drop considerably once all parties become accustomed to the requirements and the assessment of any necessary penalties against noncompliant parties. If the number of appeals continue to increase and requires the Department to expand the number of existing personnel to process and review the appeals, an increase in fees may be required as provided under KRS 304.9-054.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not used as the regulation applies to all entities operating as pharmacy benefit managers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance, Consumer Protection Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-162.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The current personnel of the Department of Insurance will investigate complaints during the first year as part of their regular job duties. The Department does not anticipate any additional cost.

(d) How much will it cost to administer this program for subsequent years? The Department anticipates the current personnel in the Department of Insurance will continue to investigate complaints. However, in the event the complaints do not reduce following a period, the Department of Insurance may be required to add personnel to investigate the complaints submitted.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amended After Comments)

900 KAR 6:125. Certificate of need annual surveys.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 216B.040(3)(a)
~~[216B.040(2)(a)1]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B[KRS-216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program]. This administrative regulation establishes the requirements for submission of annual survey data to the cabinet for publication of annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for individuals with and intellectual disability, or personal care.

(4) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing~~[and regulatory functions of]~~ health facilities and services.

(5) "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(6) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. If requested by the cabinet, the following entities shall submit annual utilization surveys:

(1) Licensed ambulatory surgery center~~[centers]~~;

(2) Licensed hospital[hospitals] performing ambulatory surgery services;

(3) Licensed home health agency[agencies];

(4) Licensed hospice~~[agencies]~~;

(5) Licensed hospital[hospitals];

(6) Licensed private duty nursing agency[agencies];

(7) Licensed long term care facility[Facilities with licensed long term care beds];

(8) Licensed facility or service with[Entities that hold a certificate of need for] MRI equipment;

(9) Licensed facility[Facilities] with megavoltage radiation equipment;

(10) Licensed psychiatric residential treatment facility[facilities]; and

(11) Licensed facility or service[Facilities] with positron emission tomography equipment; and

(12) Licensed chemical dependency treatment facility.

Section 3. Annual Survey Submission. An annual survey, if requested by the cabinet, shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <https://prdweb.chfs.ky.gov/OHPSurvey/> [<https://prd.chfs.ky.gov/OHPSurvey/>].

Section 4. ~~[Surveys shall be submitted annually as follows:~~

(1) Kentucky Health Survey Registry Ambulatory Surgery II;

(2) Kentucky Health Survey Registry Home Health II;

(3) Kentucky Health Survey Registry Hospice;

(4) Kentucky Health Survey Registry Hospital;

(5) Kentucky Health Survey Registry Private Duty Nursing;

(6) Kentucky Health Survey Registry Long Term Care;

~~(7) Kentucky Health Survey Registry Magnetic Resonance Imaging;~~

~~(8) Kentucky Health Survey Registry Megavoltage Radiation (Linear Accelerator);~~

~~(9) Kentucky Health Survey Registry Psychiatric Residential Treatment Facility; and~~

~~(10) Kentucky Health Survey Registry Positron Emission Tomography.~~

Section 5.] If requested by the cabinet, an annual survey[surveys] shall be completed and submitted no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section 5.[6.] Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the Office of Health Policy.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One (1) extension per survey of up to ten (10) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 6.[7.] Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of a draft report to a facility for its review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) Each facility shall be notified of a Web site and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review the data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) A facility may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 7.[8.] Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually[as follows:

~~(a) Kentucky Annual Ambulatory Surgical Services Report;~~

~~(b) Kentucky Annual Home Health Services Report;~~

~~(c) Kentucky Annual Hospice Services Report;~~

~~(d) Kentucky Annual Hospital Utilization and Services Report;~~

~~(e) Kentucky Annual Private Duty Nursing Agency Report;~~

~~(f) Kentucky Annual Long Term Care Services Report;~~

~~(g) Kentucky Annual Magnetic Resonance Imaging Services Report;~~

~~(h) Kentucky Annual Megavoltage Radiation Services Report;~~

~~(i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and~~

~~(j) Kentucky Annual Positron Emission Tomography Report].~~

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp/dhppd/dataresgal.htm>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 8.[9-] A facility that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(14)(b)4[2(6)]. [Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Health Survey Registry Ambulatory Surgery II", screen prints, June 2014;
- (b) "Kentucky Health Survey Registry Home Health II", screen prints, June 2014;
- (c) "Kentucky Health Survey Registry Hospice", screen prints, June 2014;
- (d) "Kentucky Health Survey Registry Hospital", screen prints, June 2014;
- (e) "Kentucky Health Survey Registry Private Duty Nursing", screen prints, June 2014;
- (f) "Kentucky Health Survey Registry Long Term Care", screen prints, June 2014;
- (g) "Kentucky Health Survey Registry Magnetic Resonance Imaging", screen prints, June 2014;
- (h) "Kentucky Health Survey Registry Megavoltage Radiation (Linear Accelerator)", screen prints, June 2014;
- (i) "Kentucky Health Survey Registry Psychiatric Residential Treatment Facility", screen prints, June 2014; and
- (j) "Kentucky Health Survey Registry Positron Emission Tomography", screen prints, June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

MOLLY NICOL LEWIS, Deputy General Counsel
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist,
Office of Legal Services, 275 East Main Street 5 W-B, Frankfort,
Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email
tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Diona Mullins, Executive Advisor, Office of Health Policy, phone 502-564-9592, email diona.mullins@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submission of annual utilization survey data to the Office of Health Policy.

(b) The necessity of this administrative regulation: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B. The amendment is necessary to clarify the requirements for submission of annual utilization survey data to the Office of Health Policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B. The amendment is necessary to clarify the requirements for submission of annual utilization survey data to the Office of Health Policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for submission of annual utilization survey data to the Office of Health Policy.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The regulation has been revised to clarify that annual

surveys shall be submitted if requested by the cabinet. It is the Cabinet's desire to eliminate the duplication of reporting by health care facilities. A facility will not be required to complete the annual surveys if the facility is currently submitting administrative claims data which could be used to generate annual utilization reports. The four (4) licensed chemical dependency treatment facilities were added to the list of facilities to be surveyed. Previously, only hospitals with chemical dependency beds were required to submit surveys. The amendment also deletes the incorporation by reference of the survey forms, allowing the Cabinet needed flexibility to revise forms as facilities are phased out of the annual survey process.

(b) The necessity of the amendment to this administrative regulation: The regulation has been revised to clarify that annual surveys shall be submitted if requested by the cabinet. Licensed chemical dependency treatment facilities will also be surveyed. The amendment also deletes the incorporation by reference of the survey forms, allowing the Cabinet needed flexibility to revise forms as facilities are phased out of the annual survey process

(c) How the amendment conforms to the content of the authorizing statutes: It is the Cabinet's desire to eliminate the duplication of reporting by health care facilities. A facility will not be required to complete the annual surveys if the facility is currently submitting administrative claims data which could be used to generate annual utilization reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the authorizing statutes by clarifying that annual surveys shall be submitted, if requested by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment affects the licensed health facilities and services required to submit annual surveys.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The four (4) licensed chemical dependency treatment facilities will be required to submit annual utilization surveys. Previously, only hospitals with chemical dependency treatment beds were required to submit surveys.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to submit a survey report is negligible. Our desire is to utilize claims data, eliminating the requirement for providers to have to complete the annual utilization surveys.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Some licensed health facilities will no longer be required to submit utilization surveys if the facilities submit administrative claims data.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does not impact a state or local government entity.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(3)(a) .

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 23:010. Outpatient pharmacy program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of outpatient drugs through the Medicaid outpatient pharmacy program for fee-for-service recipients and managed care enrollees.

Section 1. Covered Drugs. A covered drug shall be:

- (1) Medically necessary;
- (2) Approved by the FDA;
- (3) Prescribed for an indication that has been approved by the FDA or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use;
- (4) A rebateable drug; and
- (5) A covered outpatient drug.

Section 2. Diabetic Supplies. Except if Medicare is the primary payer, the department shall cover the diabetic supplies listed in this section via the department's pharmacy program and not via the department's durable medical equipment program established in 907 KAR 1:479:

- (1) A syringe with needle (sterile, 1cc or less);
- (2) Urine test or reagent strips or tablets;
- (3) Blood ketone test or reagent strip;
- (4) Blood glucose test or reagent strips;
- (5) Calibrating solutions;
- (6) Lancet device;
- (7) Lancets; or
- (8) Home blood glucose monitor.

Section 3. Tamper-Resistant Prescription Pads. (1) Each covered drug or diabetic supply shall be prescribed on a tamper-resistant prescription pad, except if the prescription is:

- (a) An electronic prescription;
- (b) A faxed prescription; or
- (c) A prescription telephoned by a prescriber or authorized agent.

(2) To qualify as a tamper-resistant prescription, the prescription pad shall contain one (1) or more of each industry-recognized feature designed to prevent:

- (a) Unauthorized copying of a completed or blank prescription form;
- (b) The erasure or modification of information written by the prescriber on the prescription; and
- (c) The use of counterfeit prescription forms.

Section 4. Kentucky Medicaid Fee-for-Service Outpatient Drug List.

(1) The department shall maintain each Outpatient Drug List to include drug coverage and availability information in the following formats:

(a) Kentucky Medicaid Provider Drug Portal Lookup, which shall be an online searchable drug database that functionally affords users the ability to perform a search of the Kentucky specific fee-for-service drug formulary for the purpose of ascertaining formulary status, drug coverage, and other plan limitations (prior authorization, quantity limits, step therapy, and diagnosis) associated with a drug;

(b) Kentucky Preferred Drug Listing (PDL), which shall be a listing of selected drugs available to fee-for-service recipients that have been included based on proven clinical and cost effectiveness and that prescribers are encouraged to prescribe if medically appropriate;

(c) Physician Administered Drug List (PAD), which was formerly known as the Physician Injectable Drug List (PIDL), and which shall indicate the list of physician administered drugs that can be billed to the fee-for-service medical benefit using appropriate Healthcare Common Procedure Coding System codes, National Drug Codes, and appropriate units;

(d) Over-the-Counter (OTC) Drug List, which shall be a list of OTCs that, if prescribed, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(e) Covered Prescription Cold, Cough, and Vitamin Product List, which shall indicate the legend drugs that, if prescribed and FDA indicated for the intended use, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(f) Long Term Care Per Diem List, which shall indicate OTC drugs that, if provided to a Medicaid nursing facility service recipient, are included in the nursing facility's standard price or daily per diem rate, and are not otherwise reimbursed by the department;

(g) Maximum Quantity Limits List, which shall indicate covered drugs that have a quantity limit consistent with the maximum dosage that the FDA has approved to be both safe and effective; and

(h) Kentucky Medicaid Diagnosis Drug List, which shall indicate covered drugs that require a diagnosis code or a prerequisite to therapy, or both.

(3) Each Outpatient Drug List shall be updated by the

department at least quarterly or otherwise as needed.

(4) Each Outpatient Drug List shall be accessible through the department's pharmacy webpage.

Section 5. Exclusions to Coverage. The following drugs shall be excluded from coverage and shall not be reimbursed:

(1) A drug that the FDA considers, by way of a final determination, to be:

(a) A less-than-effective drug; or
(b) Identical, related, or similar to a less-than-effective drug;
(2) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered by an Outpatient Drug List:

(a) A drug if used for anorexia, weight loss, or weight gain;
(b) A drug if used to promote fertility;
(c) A drug if used for cosmetic purposes or hair growth;
(d) A drug if used for the symptomatic relief of cough and colds;

(e) A vitamin or mineral product other than prenatal vitamins and fluoride preparations;

(f) An OTC drug provided to a Medicaid nursing facility service recipient and included in the nursing facility's standard price or daily per diem rate;

(g) A drug that the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

(h) A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the FDA;

(3) A drug that is not rebateable, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(4) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(5) A drug for which the department requires prior authorization if prior authorization has not been approved;

(6) A drug that shall no longer be dispensed by a pharmacy provider because it has reached the manufacturer's termination date or is 365 days past the manufacturer's obsolete date; and

(7) Investigational drugs or drugs being used for investigational uses or uses not otherwise supported by documentation found in official compendia or peer-reviewed medical literature[utilized for non-FDA indications or other investigational treatments].

Section 6. Limitations to Coverage. (1) All dispensing and administration of covered drugs shall comply with applicable federal and state law.

(2) Refills.

(a) A controlled substance in Schedule II shall not be refilled.

(b) If authorized by a prescriber, a prescription for a:

1. Controlled substance in Schedule III, IV, or V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

2. Noncontrolled substance, except as provided in subsection (3)(a) of this section, may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) Days Supply. For each initial fill or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is indicated as a noncontrolled maintenance drug per the department's nationally recognized comprehensive drug data file as a drug exempt from the thirty-two (32) day dispensing limit, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on a Kentucky Medicaid prior authorization request form and approved

by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; or

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit, and it is not feasible for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.

(4) A refill of a prescription shall not be covered unless at least ninety (90) percent of the prescription time period has elapsed.

(5) Compounded Drugs. The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs.

(6) Emergency Fills. In an emergency situation, a pharmacy provider may dispense an emergency supply of a prescribed drug to a recipient in accordance with this subsection.

(a) An emergency situation shall exist if, based on the clinical judgment of the dispensing pharmacist, it would reasonably be expected that a delay in providing the drug to the recipient would place the recipient's health in serious jeopardy or the recipient would experience substantial pain and suffering.

(b) At the time of dispensing the emergency supply, the pharmacist shall:

1. Submit a prior authorization request form to the department using the urgent fax number or the department's pharmacy webpage; or

2. Notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department.

(c) An emergency supply shall not be provided for:

1. An OTC drug;

2. A controlled substance; or

3. A drug excluded from coverage by this administrative regulation.

(d) The quantity of an emergency supply shall be:

1. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

2. The amount prescribed if the drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is not feasible for the pharmacist to dispense in a smaller quantity.

Section 7. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign his or her name in a format that allows the signature to be reproduced or preserved by the pharmacy provider confirming that the recipient received the prescription.

(2) A pharmacy provider shall maintain, or be able to produce a copy of, the recipient's signature referenced in subsection (1) of this section for six (6) years.

Section 8. Exemptions to Kentucky Enrolled Prescriber Requirements. The department shall reimburse for a full prescription or an emergency supply of a prescription, prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines it is in the best interest of the recipient to receive the prescription.

Section 9. Utilization Management. Utilization management techniques shall be applied by the department to support medically appropriate and cost effective access to covered drugs and shall include prior authorization, step therapy, quantity limitations, generic substitution, therapeutic substitution protocols, and clinical edits. (1) Step therapy.

(a) The department may implement step therapy drug treatment protocols by requiring the use of a medically-appropriate drug that is available without prior authorization before the use of a drug that requires prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from step therapy based on documentation that a drug available without prior

authorization:

1. Was used and was not an effective medical treatment or lost its effectiveness;

2. Is reasonably expected to not be an effective medical treatment;

3. Resulted in, or is reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

4. Is medically contraindicated.

(2) Prior authorization.

(a)1. If prior authorization is required for a drug, the applicable prior authorization request form shall be completed and submitted to the department by fax, mail service, telephone, or the department's pharmacy web portal.

2. The applicable prior authorization request form shall be the:

a. Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products if prior authorization is being requested for buprenorphine products for substance use treatment; or

b. Kentucky Medicaid Pharmacy Prior Authorization Form if the prior authorization is being requested for a drug that is not a buprenorphine product for substance use treatment.

(b) If a recipient presents a prescription to a pharmacy provider for a drug that requires prior authorization, the pharmacist shall:

1. Complete and submit a prior authorization request form in accordance with this subsection; or

2. Notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization.

a. If the prescriber indicates that an alternative available without prior authorization is acceptable and provides a new prescription, the pharmacist shall dispense the alternative.

b. If the prescriber indicates that an alternative available without prior authorization has been tried and failed or is clinically inappropriate or if the prescriber is unwilling to consider an alternative, the pharmacist shall request that the prescriber obtain prior authorization from the department.

(c) The department's notification of a decision on a request for prior authorization shall be made in accordance with this paragraph.

1. If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax, or the department's pharmacy web portal to the party requesting the prior authorization and, if known, to the pharmacist.

2. If the department denies a prior authorization request, the department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or, if notification cannot be made by fax or telephone, by mail to the party who requested the prior authorization.

(d) Prior authorization time limits.

1. The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 calendar days.

2. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

Section 10. Drug Review Process. The drug review process to determine if a drug requires prior authorization or other utilization management, or is otherwise restricted or excluded by the department, shall be in accordance with this section. (1) Drug review considerations. Drug review shall be based upon available and relevant clinical information to assess appropriate use of medications and include:

(a) A review of clinically-significant adverse side effects, drug interactions and contraindications, and an assessment of the likelihood of significant abuse of the drug; and

(b) An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and if the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of the drug after federal rebate and supplemental rebates have been subtracted.

(2) New drugs. Except as provided by subsections (3) and (4) of this section, upon initial coverage by the Kentucky Medicaid Program, a drug that is newly approved for marketing by the FDA under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity and not otherwise excluded shall be subject to prior authorization in accordance with KRS 205.5632.

(3) Product line. If a drug, which has been determined to require prior authorization, becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug, the new strength, package size, or other form shall require prior authorization.

(4) Generic equivalency for prescribed brands. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(5) Advisory recommendation. Drugs subject to review by the Pharmacy and Therapeutics Advisory Committee (P&T Committee) shall be reviewed in accordance with KRS 205.564 and this administrative regulation. Upon review, the P&T Committee shall make a recommendation to the department regarding utilization management of the drug including prior authorization and the recommendation shall be advisory to the commissioner in making the final determination.

(6) The department may exclude from coverage or require prior authorization for a drug that is subject to coverage limitations in accordance with 42 U.S.C. 1396r-8(d).

Section 11. Pharmacy and Therapeutics Advisory Committee (P&T Committee) Meeting Procedures. P&T Committee meetings, processes, and procedures shall be in accordance with KRS 205.564 and this administrative regulation. (1) Drug review considerations. The P&T Committee shall consider the drug review information specified in Section 10(1) of this administrative regulation when developing recommendations.

(2) Meeting processes and procedures.

(a) Public presentations. A public presentation at a P&T Committee meeting shall comply with this paragraph.

1. A presentation shall be limited to an agenda item.

2. A verbal presentation by pharmaceutical industry representatives shall not exceed three (3) minutes in aggregate per drug per drug manufacturer with two (2) additional minutes allowed for questions from the P&T Committee. Pharmaceutical industry representatives shall be limited to presenting:

a. Information on a new product; or

b. New information on a previously reviewed current agenda topic (package insert changes, new indications, or peer-reviewed journal articles).

3. A verbal presentation by an individual other than a pharmaceutical industry representative shall not exceed five (5) minutes.

4. A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department no later than five (5) business days in advance of the P&T Committee meeting date.

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indications, or peer reviewed journal articles) shall be e-mailed to the department in a Microsoft compatible format or mailed to the department as a package including twenty-five (25) printed copies. All materials shall be received by the department no later than seven (7) business days prior to the P&T Committee meeting date.

(3) Postings.

(a) P&T Committee meeting documents shall be published in accordance with KRS 205.564(6), and shall include the:

1. Meeting agenda;

2. Options, including any department recommendations, for drug review and drug review placements,

3. P&T Committee recommendations; and

4. Commissioner's final determination.

Section 12. Exceptions to P&T Committee Recommendations.

(1)(a) An interested party who is adversely affected by a recommendation of the P&T Committee may submit a written exception to the commissioner.

(b) The written exception shall be received by the commissioner within seven (7) calendar days of the date of the P&T Committee meeting at which the recommendation was made.

(c) Only information that was not available to be presented at the time of the P&T Committee meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the commissioner shall consider each recommendation of the P&T Committee and all exceptions that were filed in a timely manner prior to making a final determination.

Section 13. Final Determination. The commissioner shall issue and post a final determination in accordance with KRS 205.564(9) and (11). (1) A decision of the commissioner to remand any recommendation to the P&T Committee shall not constitute a final decision or final determination for purposes of an appeal pursuant to KRS Chapter 13B.

(2) If any recommendation of the P&T Committee is not accepted, the commissioner or commissioner's designee shall inform the P&T Committee of the basis for the final determination in accordance with KRS 205.564(9).

Section 14. Appeals. An appeal request shall:

(1) Be in writing;

(2) Be sent by mail, messenger, carrier service, or express-delivery service to the commissioner in a manner that safeguards the information;

(3) State the specific reasons the final determination of the commissioner is alleged to be erroneous or not based on the facts and law available to the P&T Committee and the commissioner at the time of the decision;

(4) Be received by the commissioner within the deadline established by KRS 205.564(12); and

(5) Be forwarded by the commissioner to the Division of Administrative Hearings of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 15. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) The person gives notice to the department by fax or email at least five (5) business days prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required; or

(b) By an individual on a subject shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required.

(3) The proposed agenda shall be posted on the department's pharmacy webpage at least fourteen (14) calendar days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) calendar days of the manufacturer's actual notice of the final decision.

Section 16. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 17. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 18. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 19. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 20. Appeal Rights. (1) An appeal of an adverse action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products", 1-3-17; and

(b) "Kentucky Medicaid Pharmacy Prior Authorization Form", 1-3-17.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, extension 2015; donna.little@ky.gov or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization. The provisions were previously included in 907 KAR 1:018 and 907 KAR 1:019 and have been updated to establish the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization. Coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are enrolled with a managed care organization have not changed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, but the amendments being made after comments amend two provisions in Section 5. First, Section 5(1) is amended to specify that FDA consideration regarding a less-than-effective drug or a drug that is identical, related, or similar to a less-than-effective drug shall be by way of a final determination. Second, Section 5(7) is amended to clarify an exclusion for investigational drugs or drugs being used for investigational uses or uses not otherwise supported by documentation found in official compendia or peer-reviewed medical literature.

(b) The necessity of the amendment to this administrative regulation: The amendments being made in the Amended After Comments version are necessary to respond to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statute by clarifying provisions governed by 42 U.S.C. 1396r-8.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clarifying the exclusions to coverage for the outpatient pharmacy program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 43,400) will be affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: No additional or new actions are needed to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no additional benefits to entities from this administrative regulation as it makes no changes to drug coverage policy.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The required system changes are of no cost to DMS as a result of the CMS mandate to implement an AAC based methodology.

(b) On a continuing basis: Please see (5)(a) above

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? DMS will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), 42 U.S.C. 1396a(a)(30), 1396r-8

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Because the system changes are pursuant to a CMS mandate, the fiscal agent as well as the pharmacy benefit manager are required to make the necessary changes at no cost to DMS.

(d) How much will it cost to administer this program for subsequent years? Please see 3.(c) above.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology but retain its coverage policy for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)**

907 KAR 23:020. Reimbursement for outpatient drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate

requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical assistance identification card or by the recipient, shall notify the department's fiscal agent of the potential third-party liability.

(7) Drug copayment requirements and provisions shall be as established in 907 KAR 1:604.

(8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.

(9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

(2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:

(a) National Average Drug Acquisition Cost or NADAC;

(b) Wholesale acquisition cost or WAC;

(c) Federal upper limit or FUL;

(d) Maximum allowable cost or MAC; or

(e) Usual and customary price.

Section 3. Professional Dispensing Fee. Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be \$10.64 per provider per recipient per drug per month.

Section 4. Reimbursement Limitations. (1) Emergency supply.

Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) 340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(b) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(c) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

(7) Physician administered drugs (PAD).

(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.

(8) Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.

Section 5. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department[, such as First Data Bank or Medispan];

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and their corresponding MAC prices accessible through the department's pharmacy webpage.

(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 6. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 7. Incorporation by Reference. (1) "Kentucky Medicaid MAC Price Research Request Form", 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, extension 2015; donna.little@ky.gov or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid

recipients who are not enrolled with a managed care organization. The provisions were previously included in 907 KAR 1:018 and 907 KAR 1:019. This administrative regulation introduces a new actual acquisition cost (AAC) based reimbursement utilizing the National Average Drug Acquisition Cost (NADAC) as published by CMS as part of the pharmacy program lowest of logic reimbursement methodology, and establishes reimbursement for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization. Reimbursement pursuant to this administrative regulation only applies to pharmacy services rendered to Medicaid "fee-for-service" recipients. These are Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse for covered outpatient drugs in accordance with this administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization. This administrative regulation establishes a new AAC based reimbursement methodology that results from a mandate from the CMS. DMS reimbursement of outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization is necessary to comply with the Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment no later than April 1, 2017 followed by necessary regulatory changes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by revising DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization in a manner that complies with a federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by revising DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, but the amendments being made after comments amend Section 5(1)(e) to clarify that a drug pricing resource may include nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department and to delete two (2) examples of drug file vendors.

(b) The necessity of the amendment to this administrative regulation: The amendments being made in the Amended After Comments version are necessary to respond to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statute by clarifying what constitutes a nationally recognized drug file vendor.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clarifying what constitutes a nationally recognized drug file vendor.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 43,400) will be affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to Medicaid recipients who are not enrolled with a managed care organization.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Because the system changes are pursuant to a CMS mandate, the fiscal agent as well as the pharmacy benefit manager are required to make the necessary changes at no cost to DMS.

(b) On a continuing basis: Please see (5)(a) above

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? DMS will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Because the system changes are pursuant to a CMS mandate, the fiscal agent as well as the pharmacy benefit manager are required to make the necessary changes at no cost to DMS.

(d) How much will it cost to administer this program for

subsequent years? Please see 3.(c) above.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 3:050. GED® eligibility requirements.

RELATES TO: KRS 158.135(1)(a), 158.143, 158.6455, 164.0064(1)(a)
STATUTORY AUTHORITY: KRS 164.0064(1)(a), 164.0234
NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 164.0234(1) requires the Kentucky Adult Education Program to promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state.]~~ KRS 164.0064(1)(a) requires that the Kentucky Adult Education Program within the Council on Postsecondary Education promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma ~~[be issued upon passage of the test given by the Kentucky Adult Education Program's approved testing centers in conformance with requirements of the GED® Testing Service].~~ KRS 164.0064(2) mandates that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education, which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates. This administrative regulation establishes the eligibility requirements for taking the GED® test.

Section 1. Eligibility Requirements. The GED® test shall be administered to an applicant with a Kentucky address who:

- (1) Has reached his or her 19th ~~[nineteenth (19th)]~~ birthday; ~~[or]~~
- (2)(a) Has reached his or her 18th birthday ~~[the legal age of withdrawal in the local school district where he or she resides]; and~~
- (b) 1. Has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;
2. Is committed or placed in an adult correctional facility;
3. Is enrolled in the Jobs Corps Program of Instruction; or
4. Is enrolled in a National Guard Youth "ChalleNge" program; ~~[4.a. Is considered a state agency child, as defined by KRS 158.135(1)(a); and~~
- b. Is approved for the GED® test by the local school superintendent upon recommendation from the applicant's service region administrator or designee;
- 5.a. Is detained in a juvenile detention center or juvenile holding facility; and
- b. Is approved for the GED® test by the local school superintendent; or
6. a. Is enrolled in a Kentucky Department of Education approved Secondary GED® Program under 704 KAR 7:150; and
- b. Is approved for the GED® test by the local school superintendent.]
- (3)(a) Has reached his or her 17th birthday;
- (b) Is considered a state agency child, as defined by KRS 158.135(1)(a); and
- (c) Is approved for the GED® test by the local school superintendent.

Section 2. Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides may waive the ninety (90) day school withdrawal provision of Section 1(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, family crisis, or other extenuating circumstances.

Section 3. Test Readiness. An applicant shall successfully complete and pass an official readiness test with the same passing

scores required to pass the GED® test prior to taking the GED® test.

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 12, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the eligibility requirements to take the GED® test.

(b) The necessity of this administrative regulation: KRS 164.0064(1) requires that the Kentucky Adult Education Program within the Council on Postsecondary Education promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency. KRS 164.0064(2) mandates that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education, which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates. This administrative regulation establishes the eligibility requirements for taking the GED® test.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets for the eligibility requirements to take the GED® test so that KYAE may issue a high school equivalency diploma upon successful passage of the test in accordance with KRS 164.0064(1) and 13 KAR 3:010.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will allow a state agency child as defined in KRS 158.135(1), who is at least seventeen (17) years of age, to take the GED® test and obtain a high school equivalency diploma upon successful passage. It also makes technical changes

in the "Necessity, Function, and Conformity" section to conform with the statutory changes enacted through HB 195. Eighteen (18) year olds participating in the National Guard Youth "ChalleNGe" program will be able to take the GED® exam without being withdrawn from school for 90 days. Finally, it removes the reference to the Kentucky Department of Education's approved Secondary GED® Program which has been repealed by the Department.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform with the passage of HB 522 (KRS 158.143) and allow 17 year-old state agency children the opportunity to take the GED® exam and receive a high school equivalency diploma.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.0064(1) requires that KYAE promulgate administrative regulations to establish programs that, upon successful completion, result in the issuance of a high school equivalency diploma. KRS 164.0064(2) requires that one program include a test that, upon passing, will entitle students to receive a high school equivalency diploma. This amendment further defines eligibility to take that exam in accordance with the newly enacted law, KRS 158.143.

(d) How the amendment will assist in the effective administration of the statutes: The amendment identifies the new category of individuals (17 year old state agency children) eligible to take the GED® exam.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary individuals and organizations affected by this regulation are the testing centers who administer the GED® test, the adult education providers, and Kentucky residents seeking to obtain a high school equivalency diploma. Entities that oversee state agency children 17 and older, such as the Department of Juvenile Justice and Department of Community Based Services, will also be impacted.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Seventeen (17) year old state agency children must receive approval from the local school superintendent and pass the readiness exam before being eligible to take the GED® test. State entities with custody or oversight of these children will need to facilitate this approval. KYAE will certify these individuals to GED® Testing Service once the eligibility requirements have been verified, as it does with all test takers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will comply with the new law allowing 17 year-old state agency children to take the GED® test.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially. We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KYAE will enforce the requirements with staff compensated out of agency operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A. This regulation does not assess fees.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? Yes. Based on whether or not an individual is 17, 18, or 19 different rules apply in order to comply with the new law related to the eligibility of state agency children to obtain a high school equivalency diploma and compulsory secondary school attendance (up to the age of 18).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local adult education providers, which include public universities and community colleges, local school boards, and local educational cooperatives, will be affected. Entities that oversee state agency children 17 and older will also be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.0064

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should have no impact on expenditures and revenues of any state or local agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Duties related to this regulation are generally assumed by one CPE staff member as part of her duties and responsibilities. There are no additional costs of administration.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:030. Audits of sheriffs' tax settlements.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for sheriffs' tax settlement audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each sheriff's tax settlement shall be conducted and reported in accordance with: (1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards,

referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) The "Audit Program[Guide] for Sheriffs'[Sheriffs'] Tax Settlements," issued by the Auditor of Public Accounts, July 1, 2017, Section 3. Auditor's Independent Judgment. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a sheriff's tax settlement shall be an audit report that provides an opinion on whether the financial statement of a sheriff's tax settlement presents fairly, in all material respects, the taxes charged, credited, and paid during the tax year.

(2) An auditor shall make tests sufficient to determine whether:

(a) The sheriff has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The sheriff has complied with all other legal requirements relating to the management of public tax funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for sheriffs' tax settlement audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's audit[examination] has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A sheriff shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a sheriff's tax settlement audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Program[Guide] for Sheriff's Tax Settlements" and this administrative regulation, shall disqualify him from conducting sheriff's tax settlement audits.

Section 6. Incorporation by Reference. (1) The "Audit Program[Guide] for Sheriffs' Tax Settlements," Auditor of Public Accounts, July 1, 2017, [~~September 15, 2006,~~] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street [~~105 Sea Hero Road, Suite 2,~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m. [~~4:30 p.m.~~].

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: July 11, 2017

FILED WITH LRC: July 11, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2017 at 9:00 a.m. at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Christopher Hunt, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601, phone 502-209-2863, fax 502-564-2912, email LChris.Hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: L. Christopher Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43.070 or KRS 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43.070 or KRS 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43.070 or 64.810.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Audit Guide for Sheriffs' Tax Settlements," issued by the Auditor of Public Accounts, with the "Audit Program for Sheriffs' Tax Settlements," issued by the Auditor of Public Accounts, July 1, 2017, which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the "Audit Guide for Sheriffs' Tax Settlements" is necessary to conform this administrative regulation to current sheriff tax settlement practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, sheriff's tax settlement audits performed under KRS 43.070 or 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all sheriff's tax settlement audits performed under KRS 43.070 or 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 120 Kentucky sheriffs, certified public accountants licensed in Kentucky who perform sheriff's tax settlement audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, sheriff's tax settlement audits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question

(3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an "Audit Program for Sheriffs' Tax Settlements" to follow in completing all audits of sheriffs' tax settlements conducted pursuant to KRS 43.070 or 64.810, consistent with the regulatory basis of accounting.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No Cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Agency receipts of payments by the sheriffs and county clerks for the expense of the audits per KRS 43.070.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all sheriffs are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 Kentucky sheriffs, certified public accountants licensed in Kentucky that perform sheriff's tax settlement audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of sheriffs is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year? This administrative regulation will not generate any revenue for the sheriffs for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for sheriffs for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

Note: If specific dollar amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The fiscal impact of this amendment to this

administrative regulation on the revenues of sheriffs is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of sheriffs is neutral, resulting in no increase or decrease in expenditures.

Other explanation: None.

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070, 43.075, 64.530, 64.810, 68.210

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for county fee officials' audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds administered by each county fee official shall be conducted and reported in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) The "Audit Program[Guide] for County Fee Officials," issued by the Auditor of Public Accounts, July 1, 2017. Section 3. Auditor's Independent Judgment. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fee official shall be an audit report that provides an opinion on whether the financial statements of the fee official present fairly, in all material respects, the receipts, disbursements, and excess fees.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee official has complied with the requirements of the uniform system of accounts adopted under KRS 64.530 and 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The fee official has complied with all other legal requirements relating to the management of public funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fee officials' audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's audit[examination] has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fee officials' audit.

(3) Failure by an independent certified public accountant to comply with the "Audit Program[Guide] for County Fee Officials" and this administrative regulation shall disqualify him or her from conducting fee officials' audits.

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Section 6. Incorporation by Reference. (1) The "Audit Program[Guide] for County Fee Officials," Auditor of Public Accounts, July 1, 2017~~[September 15, 2006]~~ is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street~~[405 Sea Hero Road, Suite 2]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.~~[4:30 p.m.]~~

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: July 11, 2017

FILED WITH LRC: July 11, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2017 at 9:00 a.m. at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Christopher Hunt, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601, phone 502-209-2863, fax 502-564-2912, email LChris.Hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: L. Christopher Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the funds contained in the fee accounts of sheriffs and county clerks, performed under KRS 43.070 or 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the funds contained in the fee accounts of sheriffs and county clerks, performed under KRS 43.070 or 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the accounts of sheriffs and county clerks, performed under KRS 43.070 or 64.810.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Audit Program for County Fee Officials," Auditor of Public Accounts, with the "Audit Program for County Fee Officials," issued by the Auditor of Public Accounts, July 1, 2017, which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by

incorporating the "Audit Program for County Fee Officials" is necessary to conform this administrative regulation to current sheriff and county clerk fee account practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, sheriff and county clerk fee account audits performed under KRS 43.070 or 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all sheriff and county clerk fee account audits performed under KRS 43.070 or 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 120 Kentucky counties, certified public accountants licensed in Kentucky who perform audits of sheriff and county clerk fee audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, sheriff and county clerk fee account audits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an "Audit Program for County Fee Officials" to follow in completing all audits of sheriff and county clerk fee accounts conducted pursuant to KRS 43.070 or 64.810, consistent with the regulatory basis of accounting.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No Cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Agency receipts of payments by the sheriffs and county clerks for the expense of the audits per KRS 43.070.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all sheriffs and county clerks are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform sheriff or county clerk fee audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of sheriffs and county clerks is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year? This administrative regulation will not generate any revenue for the sheriffs or county clerks for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for sheriffs or county clerks for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

Note: If specific dollar amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of sheriffs and county clerks is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of sheriffs and county clerks is neutral, resulting in no increase or decrease in expenditures.

Other explanation: None.

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210[—34 U.S.C. 7501-7507]

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county[counties] budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) "Audit Program[Guide] for Fiscal Courts[Court Audits],"

issued by the Auditor of Public Accounts, July 1, 2017[September 15, 2004].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented[present] fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).[the:

(a) Financial position of the governmental activities, business type activities, aggregate discretely presented component units, each major fund and the aggregate remaining fund information; and

(b) Changes in financial position and cash flows.]

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), [Single Audit Act of 1984, the Single Audit Act Amendments of 1996, and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"] shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the "Audit Program[Guide] for Fiscal Courts[Court Audits]" and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Audit Program[Guide] for Fiscal Courts[Court Audits]", Auditor of Public Accounts, July 1, 2017[September 15, 2006,] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street[405 Sea Hero Road Suite 2], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.[4:30 p.m.]

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: July 11, 2017

FILED WITH LRC: July 11, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2017 at 9:00 a.m. at the office of the Auditor of Public

Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Christopher Hunt, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601, phone 502-209-2863, fax 502-564-2912, email LChris.Hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: L. Christopher Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Audit Guide for Fiscal Courts," issued by the Auditor of Public Accounts, September 15, 2006, with the "Audit Program for Fiscal Courts," issued by the Auditor of Public Accounts, July 1, 2017, which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the "Audit Program for Fiscal Courts" is necessary to conform this administrative regulation to current fiscal court practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, fiscal court audits performed under KRS 43.070 or KRS 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all fiscal court audits performed under KRS 43.070 or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All 120 Kentucky counties, certified public accountants licensed in Kentucky who perform audits of fiscal courts, and the Auditor of Public Accounts, are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, fiscal court audits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an "Audit Program for Fiscal Court Audits" to follow in completing all audits of fiscal courts conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting or Generally Accepted Accounting Principals (GAAP).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No Cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Agency receipts of payments by the fiscal courts for the expense of the audits per KRS 43.070.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform fiscal court audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year? This administrative regulation will not generate any revenue for the fiscal courts for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for fiscal courts for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

Note: If specific dollar amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other explanation: None.

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.605(11), 161.640, 161.675

STATUTORY AUTHORITY: KRS 161.310(1), 161.600(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the [Kentucky] Teachers' Retirement System TRS [(KTRS)] to promulgate all administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.600(4) requires the board to promulgate administrative regulations concerning application for an annuity to receive benefit payments. This administrative regulation establishes procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. (1) Applications for retirement shall be filed on the Application for Service Retirement or on-line using the Web site maintained by TRS and shall include:

(a) [(4)] A photocopy of the applicant's signed Social Security card;

(b) [(2)] A certified birth certificate;

(c) [(3)] If applicable, a certified marriage certificate; and

(4) A voided or cancelled check from the institution to which monthly disbursements shall be electronically transmitted.

(2) If the member files the application for service retirement on-line, he shall:

(a) Either mail or scan and upload the documents required by subsection (1) of this section to the Web site maintained by TRS; and

(b) Notify his employer to complete the on-line application for submission to TRS.

(3) If the member chooses either retirement Option III, IIIa, IV, or IVa, the member shall also include a photocopy of the designated beneficiary's:

(a) Signed Social Security card; and

(b) Certified birth certificate.

Section 2. If a member meets the eligibility requirements set forth in KRS 18A.225(1), and KRS 161.675(1) and (2), the retirement system shall provide the forms required by the Kentucky Department of Employee Insurance for enrollment in health

insurance coverage. If the member is eligible for Medicare, the retirement system shall provide the Medicare Eligible Health Plan form.

Section 3. Applications for retirement for service shall not be filed later than the first day of the month immediately preceding the month that retirement is to be effective. (1) Retirement for service shall be effective on the first day of the month following the date that a properly completed and filed application is received at the offices of [Kentucky] Teachers' Retirement System.

(2) A member eligible to retire may exercise this right during a school year in which the member has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement.

Section 4. [3.] An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date established in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with Section 2 of this administrative regulation.

Section 5. [4.] The provisions of this administrative regulation shall apply to any member who is returning to retirement after having waived his or her retirement allowance under the provisions of KRS 161.605(11).

Section 6. [5.] Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Application for Service Retirement", (2017);

(b) "Instructions for the Withholding Certificate for TRS Annuity Payments, (2017); and

(c) "Medicare Eligible Health Plan (MEHP)" (2017) form [2016; is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at [Kentucky] Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5 p.m. This material may also be found on the agency's Web site at www.trs.ky.gov.

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: June 19, 2017

FILED WITH LRC: July 12, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2017, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, August 17, 2017, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Thursday, August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedures for filing either a paper or on-line retirement application and determines the effective date of annuity payments.

(b) The necessity of this administrative regulation: Members who meet the conditions for retirement mandated by KRS 161.600(1) must also meet the criteria for filing an application to begin receiving an annuity benefit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The TRS Board of Trustees is mandated under KRS 161.600(4) to establish the process for filing an application for retirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for filing an application for retirement as contemplated by KRS 161.600(4).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment reflects the member's ability to file an on-line retirement application and file for health insurance coverage.

(b) The necessity of the amendment to this administrative regulation: To clarify that the member: (1) may file either a paper or on-line retirement application; (2) mail or scan and upload the necessary documents following the filing of an on-line retirement application; and (3) may utilize the forms to request health care coverage.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies that a member may file either a paper or on-line retirement application and the forms necessary for health care coverage.

(d) How the amendment will assist in the effective administration of the statutes: Will give the members two options on the manner of filing retirement applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Active, contributing, members of TRS who are eligible for retirement.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Members who utilize the on-line retirement application will have to either mail or scan and upload the required documents and notify their employers they must complete the employer portions of the on-line form. Members shall utilize the necessary forms to sign up for health care coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Members of the retirement system who choose to mail a retirement application or the documents to be attached to an on-line form shall incur the cost of postage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to retire on their chosen date.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly

increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310(1), 161.600(4), 161.675.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

4. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified at this time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (Amendment)

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 218A.205(3)(a) requires the board to establish mandatory prescribing and dispensing standards related to controlled substances. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances.

Section 1. Applicability. (1) A physician who is authorized to prescribe or dispense a controlled substance shall comply with the standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance established in this administrative regulation.

(2) The professional standards established in this administrative regulation shall not apply to a physician prescribing or dispensing a controlled substance:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital;

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose~~[prescribed or dispensed]~~ to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure; ~~[or]~~

(g) That has been classified as a Schedule V controlled substance;

(h) That is a Schedule II controlled substance as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services; or

(i) That is a Schedule II controlled substance immediately prior to, during, or within the fourteen (14) days following a major surgery or significant trauma, being any operative or invasive procedure or a delivery, and the usage does not extend beyond fourteen (14) days.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician prescribing or dispensing a controlled substance shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond the physician's control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall document those circumstances in the patient's record and only prescribe or dispense a controlled substance to the patient if the patient record appropriately justifies the prescribing or dispensing of a controlled substance under the circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing a controlled substance shall:

(1) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

(a) If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

(b) If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(2) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(3) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(4) Only prescribe Schedule II controlled substances in accordance with the standards established in Section 9 of this administrative regulation;

(5) Not prescribe or dispense a long-acting or controlled-release opioid (e.g. OxyContin, fentanyl patches, or methadone) for acute pain that is not directly related to and close in time to a

specific surgical procedure;

~~(6) [(5)]~~ Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of the controlled substance when the condition requiring the controlled substance use has resolved; and

~~(7) [(6)]~~ Explain to the patient how to safely use and properly dispose of any unused controlled substance.

Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the mandatory professional standards established in subsection (2) of this section. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician if:

(a) Each practitioner involved has lawful access to the patient's medical record;

(b) There is compliance with all applicable standards; and

(c) Each practitioner performing an action to meet the required standards is acting within the practitioner's legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;

2. Past medical history;

3. History of substance use and any prior treatment for that use by the patient, and history of substance abuse by first degree relatives of the patient;

4. Past family history of relevant illnesses and treatment; and

5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing a controlled substance on a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of a controlled substance after determining that continued use of the controlled substance is safe and medically appropriate in the absence of that information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of a controlled substance, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms without simply describing or listing the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as a specialized evaluation or assessment, referral to an appropriate specialist, and the usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of an appropriate specialized evaluation or assessment, the physician shall only prescribe long term use of a controlled substance after establishing that its use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically

expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

a. Is presently suffering from another medical condition which may impact the prescribing or dispensing of a controlled substance; or

b. Presents a significant risk for illegal diversion of a controlled substance.

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provider into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert a controlled substance, but determines to continue long term prescribing of the controlled substance, the physician shall use a prescribing agreement that meets professional standards. The prescribing agreement and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substance prescribed to the patient will be used or is likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall not prescribe any controlled substance to that patient.

(i) After explaining the risks and benefits of long-term use of a controlled substance, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by another physician, of a trial of noncontrolled modalities and lower doses of a controlled substance in increasing order to treat the pain and related symptoms associated with the primary medical complaint, before continuing with long term prescribing of a controlled substance at a given level.

Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) If a physician continues to prescribe or dispense a controlled substance beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary medical complaint, the physician shall comply with the professional standards established in subsection (2) of this section and, if a Schedule II controlled substance, Section 9 of this administrative regulation. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as established in Section 4(1) of this administrative regulation.

(2)(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

a. The controlled substance prescribed or dispensed has been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled substance prescribed or dispensed is not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled substance in an improper or inappropriate manner or divert it for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall:

1. Ensure that a current history is obtained from the patient;

2. Ensure that a focused physical examination is considered, and performed, if appropriate; and

3. Perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. The physician shall modify the diagnosis, treatment plan, or controlled substance therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of a controlled substance, the physician shall discontinue the use of the controlled substance or justify its continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with a controlled substance, and if improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions to be addressed in order to resolve the medical complaint.

(f) For a patient exhibiting symptoms suggestive of a mood, anxiety, or psychotic disorder, the physician shall obtain a psychiatric or psychological consultation for intervention if appropriate.

(g) If a patient reports experiencing episodes of breakthrough pain, the physician shall:

1. Attempt to identify the trigger or triggers for each episode;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment; and

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, determines to add an as-needed controlled substance to the regimen, take appropriate steps to minimize the improper or illegal use of the additional controlled substance.

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs a preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i)1. At least once every three (3) months, the physician shall obtain and review a current KASPER report, for the twelve (12) month period immediately preceding the request, and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled substance as directed, is diverting a controlled substance, or is engaged in any improper or illegal use of a controlled substance, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining a controlled substance from another practitioner without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioner of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist if appropriate.

(j) If appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k)1. During the course of long-term prescribing or dispensing of a controlled substance, the physician shall utilize drug screens, appropriate to the controlled substance and the patient's condition, in a random and unannounced manner at appropriate times. If the drug screen or other information available to the physician indicates that the patient is noncompliant, the physician shall:

a. Do a controlled taper, consistent with subparagraph 3 of this paragraph;

b. Stop prescribing or dispensing the controlled substance immediately; or

c. Refer the patient to an addiction specialist, mental health

professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment or refer the patient to addiction management if:

a. There has been no improvement in function and response to the medical complaint and related symptoms, if improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects, including but not limited to overdose or events leading to hospitalization or disability;~~[or]~~

c. The patient exhibits inappropriate drug-seeking behavior or diversion; or

d. The patient is taking high-risk regimen, including but not limited to dosages ≥ 50 MME/day or opioids with benzodiazepines, without evidence of benefit.

3. The physician shall taper controlled substances in a manner slow enough to minimize symptoms and signs of opioid withdrawal and shall collaborate with other specialists as needed to optimize nonopioid pain management and psychosocial support for anxiety related to the taper.

4. A physician shall stop prescribing or dispensing any controlled substance diverted by or from the patient or taken less frequently than once a day.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as established in Sections 3 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an emergency department shall not routinely:

(1) Administer an intravenous controlled substance for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(2) Provide a replacement prescription for a controlled substance that was lost, destroyed, or stolen;

(3) Provide a replacement dose of methadone, suboxone, or subutex for a patient in a treatment program;

(4) Prescribe a long-acting or controlled-release controlled substance, such as OxyContin, fentanyl patches, or methadone or a replacement dose of that medication;

(5) Administer Meperidine to the patient; or

(6) Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by the primary treating physician or another physician, with no refills. If the controlled substance prescription exceeds seven (7) days in length (or exceeds three (3) days if a Schedule II controlled substance), the patient record shall justify the amount of the controlled substance prescribed.

Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions. (1) Before initially prescribing or dispensing a controlled substance to a patient for a condition other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

1. If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

2. If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(b) Obtain and review a KASPER report for that patient, for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it

is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance needed to treat the specific medical complaint;

(e) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of a controlled substance when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance.

(2) If the physician continues to prescribe or dispense a controlled substance to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substance.

(3) If a physician receives a request from an established patient to prescribe or dispense a limited amount of a controlled substance to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified, with or without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) If the decision is made that it is medically appropriate to prescribe or dispense the controlled substance, prescribe or dispense the minimum amount of the controlled substance to appropriately treat the situational anxiety or depression.

Section 8. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) A physician prescribing or dispensing a controlled substance shall take appropriate steps to educate a patient receiving a controlled substance.

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov.

Section 9. Additional Standards for Prescribing or Dispensing Schedule II Controlled Substances~~[or Schedule III Controlled Substances Containing Hydrocodone]~~. (1) In addition to the other standards established in this administrative regulation, prior to the initial prescribing or dispensing of a Schedule II controlled substance~~[or a Schedule III controlled substance containing hydrocodone]~~ to a human patient, a physician shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;

(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(2) In addition to the other standards established in this administrative regulation, for purposes of treating pain as or related to an acute medical condition, a physician shall not prescribe more than a three (3) day supply of a Schedule II controlled substance, unless the physician determines that more than a three (3) day supply is medically necessary and the physician documents the acute medical condition and lack of alternative medical treatment

options to justify the amount of the controlled substance prescribed.

(3)(a) In addition to the other standards established in this administrative regulation, a physician prescribing or dispensing additional amounts of a Schedule II controlled substance ~~[or a Schedule III controlled substance containing hydrocodone]~~ for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;
 2. Provide to the patient any new information about the treatment; and
 3. Modify or terminate the treatment as appropriate.
- (b) If the course of treatment extends beyond three (3) months, the physician shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance ~~[or a Schedule III controlled substance containing hydrocodone]~~.

(4)(3) To the extent not already required by the standards established in this administrative regulation, for each patient for whom a physician prescribes or dispenses a Schedule II controlled substance ~~[or a Schedule III controlled substance containing hydrocodone]~~, the physician shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

- (a) Medical history and physical or mental health examination;
- (b) Diagnostic, therapeutic, and laboratory results;
- (c) Evaluations and consultations;
- (d) Treatment objectives;
- (e) Discussion of risk, benefits, and limitations of treatments;
- (f) Treatments;
- (g) Medications, including date, type, dosage, and quantity prescribed or dispensed;
- (h) Instructions and agreements, and
- (i) Periodic reviews of the patient's file.

(5)(4) The additional standards for prescribing or dispensing a Schedule II controlled substance ~~[or a Schedule III controlled substance containing hydrocodone]~~ established in this section shall not apply to:

(a) A physician prescribing or administering that controlled substance immediately prior to, during, or within the fourteen (14) days following a major surgery or significant trauma, being any ~~[an]~~ operative or invasive procedure or a delivery, if the prescribing or administering is medically related to the operative or invasive procedure or delivery and the medication usage does not extend beyond the fourteen (14) days; or

(b) A physician prescribing or dispensing that controlled substance:

1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a physician in those hospitals or facilities if no institutional account exists, queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query, within twelve (12) hours of the patient's or resident's admission, and places a copy of the query in the patient's or resident's medical records for use during the duration of the patient's stay at the facility;

2. As part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

3. As part of the patient's hospice or end-of-life treatment;

4.(3.) For the treatment of pain associated with cancer or with the treatment of cancer;

5.(4.) In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

6.(5.) Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:

- a. Is done as a substitute for the initial prescribing or dispensing;
- b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

7.(6.) Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another physician in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

8.(7.) To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department for Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.

Section 10. Violations. (1) Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.

RANDEL C. GIBSON, D.O., President

APPROVED BY AGENCY: June 26, 2017

FILED WITH LRC: June 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2017 at 10:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish professional standards for prescribing and dispensing controlled substances the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment clarifies the professional standard for titration of controlled substances consistent with the 2016 Centers for Disease Control and Prevention Guideline for the Prescribing of Opioids for Chronic Pain and establishes the professional standard of a 3-day prescribing limit on Schedule II controlled substances for acute pain in conformity with the 2017 General Assembly's enactment of HB 333.

(b) The necessity of the amendment to this administrative regulation: It was necessary to amend the regulation in order to clarify the professional standard for titration of controlled substances consistent with the 2016 Centers for Disease Control and Prevention Guideline for the Prescribing of Opioids for Chronic Pain and to establish the professional standard of a 3-day prescribing limit on Schedule II controlled substances for acute pain in conformity with the 2017 General Assembly's enactment of HB 333.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation acts specifically to further clarify the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe or dispense controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to follow the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician including having professional standards for prescribing or dispensing controlled substances which will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Board of Medical Licensure will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311.565(1)(a) and KRS 218A.205(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.196

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the Board of Nursing to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

- (a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;
- (b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;
- (c) Neonatal Nursing: Scope and Standards of Practice;
- (d) Nursing: Scope and Standards of Practice;
- (e) Pediatric Nursing: Scope and Standards of Practice;
- (f) Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice;
- (g) Scope of Practice for Nurse Practitioners;
- (h) Standards of Practice for Nurse Practitioners;
- (i) Scope of Nurse Anesthesia Practice;
- (j) Standards for Nurse Anesthesia Practice;
- (k) Standards for Office Based Anesthesia Practice;
- (l) Standards for the Practice of Midwifery;
- (m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice; and
- (n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS).

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the Notification to Discontinue the CAPA-NS After Four Years.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS).

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a DEA Controlled Substance Registration Certificate shall be reported in writing to the board

within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:

- (a) Finds a drug screen to be clinically appropriate; or
- (b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

- (a) Medical history and physical or mental health examination;
- (b) Diagnostic, therapeutic, and laboratory results;
- (c) Evaluations and consultations;
- (d) Treatment objectives;
- (e) Discussion of risk, benefits, and limitations of treatments;
- (f) Treatments;
- (g) Medications, including date, type, dosage, and quantity prescribed;
- (h) Instructions and agreements;
- (i) Periodic reviews of the patient's file; and
- (j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescribing:

- a. Is done as a substitute for the initial prescribing;
- b. Cancels any refills for the initial prescription; and
- c. Requires the patient to dispose of any remaining

unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not be utilized by APRNs in this state.

(13) An APRN may order a reverse KASPER report to review the APRN's prescribing practices and to verify the information contained in KASPER is correct.

(14) An APRN shall not issue a prescription for hydrocodone combination products, Schedule II controlled substances, for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of the Schedule II controlled substance is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for the Schedule II controlled substance is prescribed to treat chronic pain;

(c) The prescription for the Schedule II controlled substance is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for the Schedule II controlled substance is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for the Schedule II controlled substance is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for the Schedule II controlled substance is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) The Schedule II controlled substance is administered directly to an ultimate user in an inpatient setting.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2012 Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice", 2014, American Nurses

Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2015 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;

(q) "Notification to Discontinue the CAPA-NS After Four Years", 8/2015, Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: July 7, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.042 which requires the Board to

establish these requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing APRN scope and standards of practice.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Language is being added pursuant to HB 333 (2017 Regular Session) that limits prescriptions of Schedule II drugs to 72 hours with certain exceptions.

(b) The necessity of the amendment to this administrative regulation: The amendment is required by HB 333.

(c) How the amendment conforms to the content of the authorizing statutes: By adopting the required language.

(d) How the amendment will assist in the effective administration of the statutes: The Board will enforce the new requirements for Schedule II prescriptions by APRNs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: currently licensed APRNs, approximately 2500.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An APRN who writes a prescription for hydrocodone combination products that will exceed 72 hours must comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amendment)**

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study.] KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. KRS 335.525(5)(a) requires a licensed professional counselor associate to maintain ongoing supervision as approved by the board. This administrative regulation establishes the qualifications of a supervisor~~~~[This administrative regulation establishes the requirements relating to who may provide qualifying supervision].~~

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor or licensed professional counselor associate, an applicant shall submit a LPCC-S Application and:

(a) Be licensed by the board as a licensed professional clinical counselor;

(b) Not have:

1. An unresolved citation filed against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate; or

3. An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

(c) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(d) 1. Have taught or completed a three (3) hour graduate level course in counseling supervision; or

2. A fifteen (15) hour board-approved supervisor training course [required by subsection (3) of this section].

(2) Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(d) of this section.

(3) A three (3) hour graduate level course exclusively on supervision or the board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Except as established in paragraph (c) of this subsection, professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including ~~[Kentucky laws governing the practice of counseling and]~~ counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) The board-approved supervisor training course shall be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for licensure at the same time.

Section 3. Incorporation by Reference. (1) "LPCC-S Application", June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: July 13, 2017

FILED WITH LRC: July 13, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made

unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on August 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be a board-approved supervisor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's delegated authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board-approved supervisor.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment: (1) requires an individual to complete a LPCC-S Application; (2) clarifies the requirement of a graduate-level course; and (3) incorporates the LPCC-S Application into the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the requirements of a graduate-level course that would satisfy the requirement; and incorporate the LPCC-S Application.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the board's delegated authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists by establishing the process for becoming a designated supervisor and the requirements of a graduate-level course to becoming a designated supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require supervisors or supervisees to take any action to be in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and may designate a license with a LPCC-S to clearly designate that the individual is a board-approved supervisor.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee increase is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), and (5).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Application, education, and examination requirements.

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by

the board. This administrative regulation establishes the application, education, and examination requirements for licensure.

Section 1. (1) Degree in counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in ~~each~~^{a minimum of seven (7)} of the nine (9) content areas established in KRS 335.525(1)(d) or 335.527(1)(a);

2. Include three (3) semester hours or four and one-half (4.5) quarter hours, at the minimum, on professional orientation and ethics with the concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, Christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or, if that applicant is applying for endorsement, in each area listed in KRS 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or, if that applicant is applying for endorsement, in all nine (9) of the content areas listed in KRS 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation. (1)(a) All coursework submitted for licensure shall be from a regionally accredited educational institution, which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or Western Association of Schools and Colleges.

(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.

(2) An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

(b) Maintains continuous enrollment; and

(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

Section 3. Examination. An applicant for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure. (1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor to the board;

2. Pay the fee as established in 201 KAR 36:020;

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;

4. Complete at least three (3) semester hours or four and one half (4.5) quarter hours for each of the following curriculum content areas as:

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation processes, and includes the following:

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations;

b. Human growth and development that provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations;

c. Lifestyle and career development that provides an understanding of career counseling, development and related factors. Coursework includes the following:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources,

including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting that provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, and includes the following:

(i) Principals of group dynamics, including group counselor components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals that provides an understanding of individual and group approaches to assessment and evaluation in counseling practice. Coursework includes the following:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

(iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;

(vii) Strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling; and

(viii) Ethical considerations;

f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, and includes the following:

(i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) Individual, family, and group counseling strategies with diverse populations; and

(iv) Ethical considerations;

g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior that provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework includes the following:

(i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), fifth (5th) edition, or the DSM currently in use;

(ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;

(iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and

psychological disorders;

(iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and

(v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;

h. Research and evaluation is a course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework includes the following:

(i) Basic types of research methods to include qualitative and quantitative research designs;

(ii) Basic parametric and nonparametric statistics;

(iii) Principles, practices, and applications of needs assessment and program evaluation;

(iv) Uses of computers for data management and analysis; and

(v) Ethical and legal considerations;

i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework includes the following:

(i) History of the counseling profession, including significant factors and events;

(ii) Professional roles and functions of counselors, including similarities and differences with other types of professionals;

(iii) Professional organizations (primarily the American Counseling Association (ACA), its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of the National Board of Certified Counselors (NBCC) or the ACA and related ethical and legal issues, and the applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, the evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

j. Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which includes the following:

(i) 600 clock hours of total experience;

(ii) At least 240 clock hours of direct service, including experience leading groups;

(iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;

(iv) An average of one and one-half (1 1/2) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;

(v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service (e.g., record keeping, assessment instruments, supervision, information and referral, in-service and staff meetings);

(vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and

(vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit the results of a background check performed within the last ninety (90) days by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background investigation check performed by

the Federal Bureau of Investigation (FBI) and the FBI cannot complete the background investigation check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(c) if the degree in counseling or the degree in a related field is not from a CACREP accredited institution.

(b) If applying for licensure via endorsement for reciprocity, an applicant shall:

1. Meet the requirements in paragraph (a)1. and 2. of this subsection; and

2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit an Application for Licensed Professional Counselor Associate to the board;

(b) Pay the fee as established in 201 KAR 36:020;

(c) Submit an official transcript;

(d) Satisfy the requirements of subsection (1)(a)4. of this section;

(e) Submit the results of a background check performed within the last ninety (90) days by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background investigation check performed by the Federal Bureau of Investigation (FBI) and the FBI cannot complete the background investigation check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit; and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5. (1) An applicant for licensure shall be of good moral character. If an applicant lacks good moral character, the applicant has the duty to provide available evidence relative of rehabilitation.

(2) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(3) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensed Professional Clinical Counselor", January 2017; ~~and~~

(b) Application for "Licensed Professional Counselor Associate", January 2017; and

(c) "Optional Affidavit for Licensure", June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: July 13, 2017

FILED WITH LRC: July 13, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

August 31, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on August 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and examination requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational and examination requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the Board. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and examination that are acceptable for licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes an option for an applicant, who does not have a criminal history to submit an optional affidavit while waiting for FBI background check to be completed. The amendment also incorporated the optional affidavit to be used.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it presently takes several months for a FBI background check to be completed.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with KRS 335.515(1), (3), 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate the delay in a qualified applicant becoming licensed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will have to submit a

criminal background check and syllabi.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a cost of obtaining a criminal background check, which the board understands to be between \$10 and \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be expediting application decisions without the need to defer to the next month so the board can obtain additional information.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted, with the[and] head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Shad" means a live gizzard shad or threadfin shad.

(10) "Single hook" means a hook with no more than one (1) point.

(11)[(40)] "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(12)[(44)] "Slot limit" means a size range of a fish species that shall be released by an angler.

(13)[(42)] "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(14)[(43)] "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (j) of this subsection, except as established in Sections[Section] 3 through 7 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15);

(c) Sauger, walleye, and any hybrid thereof[their hybrids] daily creel limit, singly or in combination, six (6); walleye and walleye hybrids size limit,[walleye and their hybrids,] fifteen (15) inches; no size limit for sauger;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20)[thirty (30)]; no size limit;

(i) Trout.

1. No culling statewide.
2. Rainbow trout [~~and brown trout~~] daily creel limit, [~~singly or in combination,~~] eight (8); ~~no size limit~~ [~~more than three (3) of which shall be brown trout.~~]
3. ~~No size limit on rainbow trout.~~
3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches [~~4. Twelve (12) inch size limit on brown trout.~~]
4. [~~5.~~] Brook trout, catch and release only; and
 - (j) Redear sunfish daily creel limit, twenty (20); no size limit.
 - (2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.
 - (3) A person shall release grass carp caught from a lake owned or managed by the department.
 - (4) A person shall release any:
 - (a) Lake sturgeon; or
 - (b) Alligator gar.
 - (5) A person shall release fish:
 - (a) Below the minimum size limits established by this administrative regulation;
 - (b) Within a protected slot limit established by this administrative regulation; or
 - (c) Of a particular species if a person already possesses the daily creel limit for that species.
 - (6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:
 - (a) Fishing;
 - (b) On the shoreline; or
 - (c) On the water.
 - (7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:
 - (a) At the weigh-in site;
 - (b) At the release site; or
 - (c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.
 - (8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:
 - (a) Bagged, sealed, and placed in a garbage dump;
 - (b) Donated to a charity for the purpose [~~purposes~~] of human consumption; or
 - (c) Transferred to a conservation officer or another agent of the department.
 - (9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:
 - (a) Fishing;
 - (b) On the shoreline; or
 - (c) On the water.
 - (10) A person may possess sport fish below the size limit or beyond the possession limit if the person:
 - (a) Obtains the fish from a licensed fish propagator or other legal source; and
 - (b) Retains a receipt or other written proof that the fish were legally acquired.
 - (11) A person shall release all caught trout unless the person:
 - (a) Has a valid trout permit;
 - (b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or
 - (c) Is fishing in a licensed pay lake stocked with trout by the lake operator.
 - (12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:
 - (a) An insect;
 - (b) Minnow;
 - (c) Fish egg;
 - (d) A worm;
 - (e) Corn;
 - (f) Cheese;

- (g) Cut bait; or
- (h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.
- (13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (77) [(78)] of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

- (2) Barkley Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Crappie size limit, ten (10) inches; ~~daily creel limit, twenty (20).~~
 - (c) Sauger size limit, fourteen (14) inches;
- (3) Barren River Lake.
 - (a) Crappie size limit, nine (9) inches.
 - (b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.
 - (c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
 - (d) Barren River Lake shall extend up:
 1. Barren River to the Highway 100 bridge;
 2. Long Creek to the Highway 100 bridge;
 3. Beaver Creek to the Highway 1297 bridge;
 4. Skaggs Creek to the Mathews Mill Road bridge; and
 5. Peter Creek to the Peter Creek Road bridge;
- (4) Beaver Lake, Anderson County.
 - (a) ~~Largemouth bass size limit, fifteen (15) inches.~~
 - (b) Channel catfish size limit, twelve (12) inches.
 - (b) [(c)] A person shall not possess shad or use shad as bait;
- (5) Beech Fork Reservoir, Powell County.
 - (a) Largemouth bass size limit, fifteen (15) inches.
 - (b) Bluegill daily creel limit, fifteen (15);
- (6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;
- (7) [(6)] Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;
- (8) [(7)] Boltz Lake, Grant County.
 - (a) A person shall not possess shad or use shad as bait.
 - (b) Channel catfish size limit, twelve (12) inches;
- (9) [(8)] Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;
- (10) [(9)] Buckhorn Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Muskellunge size limit, thirty-six (36) inches.
 - (c) Crappie size limit, nine (9) inches;
- (11) [(10)] Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;
- (12) [(11)] Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches;
- (13) [(12)] Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;
- (14) [(13)] Carr Creek Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Crappie size limit, nine (9) inches;
- (15) [(14)] Carter Caves State Park Lake, Carter County.
 - (a) Fishing shall be during daylight hours only.
 - (b) Largemouth bass.
 1. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.
 - (c) A person shall not possess shad or use shad as bait;
- (16) [(15)] Cave Run Lake.
 - (a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.
 - (b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches;
~~(17) [(46)]~~ Cedar Creek Lake, Lincoln County.
 (a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).
 (b) Channel catfish size limit, twelve (12) inches;
~~(18) [(47)]~~ Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;
~~(19) [(48)]~~ Corinth Lake, Grant County.
 (a) A person shall not possess shad or use shad as bait.
 (b) Channel catfish size limit, twelve (12) inches;
~~(20) [(49)]~~ Cumberland Lake.
 (a) 1. Largemouth bass size limit, fifteen (15) inches.
 2. Smallmouth bass size limit, eighteen (18) inches.
 3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).
 4. Crappie size limit, ten (10) inches.
 (b) Cumberland Lake shall extend up:
 1. The Cumberland River to Cumberland Falls;
 2. The Big South Fork to Devils Jump;
 3. The Rockcastle River to The Narrows; and
 4. The Laurel River to Laurel River Dam;
~~(21) [(20)]~~ Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches;
~~(22) [(24)]~~ Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections ~~[(37) and] (38) and (39)~~ of this section.
 (a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).
 (b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).
 (c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
 (d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
 (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;
~~(23) [(22)]~~ Dale Hollow Lake.
 (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
 (b) Walleye and ~~any~~ walleye hybrids, ~~hybrid~~ daily creel limit, five (5); size limit, sixteen (16) inches.
 (c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.
 (d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.
 (e) Largemouth bass size limit, fifteen (15) inches.
 (f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.
 (g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);
~~(24) [(23)]~~ Dewey Lake.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
 (c) Muskellunge size limit, thirty-six (36) inches;
~~(25) [(24)]~~ Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
~~(26) [(25)]~~ Doe Run Lake, Kenton County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
~~(27) [(26)]~~ Dog Fork, Wolfe County. A person shall only fish with

an artificial bait with a single hook;
~~(28) [(27)]~~ Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.
 (a) There shall be a slot limit between twelve (12) and sixteen (16) inches.
 (b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;
~~(29) [(28)]~~ Elmer Davis Lake, Owen County.
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (b) Channel catfish size limit, twelve (12) inches.
 (c) A person shall not possess shad or use shad as bait;
~~(30) [(29)]~~ Fishtrap Lake.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches.
 (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
~~(31) [(30)]~~ Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
~~(32) [(34)]~~ Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily creel limit, five (5); size limit, fifteen (15) inches;
~~(33) [(32)]~~ General Butler State Park Lake, Carroll County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
~~(34) [(33)]~~ Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;
~~(35) [(34)]~~ Greenbo Lake, Greenup County.
 (a) A person shall not possess shad or use shad as bait.
 (b) Bluegill and sunfish daily creel ~~and possession~~ limit, fifteen (15) fish;
~~(36) [(35)]~~ Green River Lake.
 (a) Crappie size limit, nine (9) inches.
 (b) Muskellunge size limit, thirty-six (36) inches;
~~(37) [(36)]~~ Guist Creek Lake, Shelby County. Channel catfish size limit, twelve (12) inches;
~~(38) [(37)]~~ Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;
~~(39) [(38)]~~ Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:
 (a) Only use artificial bait; and
 (b) Release all trout;
~~(40) [(39)]~~ Jericho ~~Jerico~~ Lake, Henry County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait;
~~(41) [(40)]~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, ten (10) inches; ~~daily limit, twenty (20)]~~.
 (c) Sauger size limit, fourteen (14) inches;
~~(42) [(44)]~~ Kentucky River WMA, Boone Tract, Benjy Kinman Lake.
 (a) Largemouth bass. Catch and release only.
 (b) ~~Crappie daily creel limit, fifteen (15).~~
 (c) ~~Sunfish daily creel limit, fifteen (15).~~
 (d) ~~Catfish daily creel limit, four (4);~~
~~(43) [(42)]~~ Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).
 (b) Crappie daily creel limit, fifteen (15).
 (c) Sunfish daily creel limit, fifteen (15).
 (d) Catfish daily creel limit, four (4);
~~(44) [(43)]~~ Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;

~~(45)~~~~(44)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(46)~~~~(45)~~ Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half $(\frac{1}{2})$ hour ~~($\frac{1}{2}$)~~ after sunset through one-half $(\frac{1}{2})$ hour before sunrise;

~~(47)~~~~(46)~~ Lake Malone, Muhlenberg and Logan counties.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches;

~~(48)~~~~(47)~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

~~(48)~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait;

(49) Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel and blue catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(50) Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(51) Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(52) Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(53)~~~~Leary Lake, Grant County.~~

~~(a) A person shall not fish except during daylight hours.~~

~~(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).~~

~~(c) Channel catfish daily limit, four (4);~~

~~(54)~~ Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

~~(54)~~~~(55)~~ Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

~~(55)~~~~(56)~~ McNeely Lake, Jefferson County.

(a) Channel and blue catfish size limit, twelve (12) inches.

(b) A person shall not possess shad or use shad as bait;

~~(56)~~~~(57)~~ Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

~~(57)~~~~(58)~~ New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

~~(58)~~~~(59)~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

~~(59)~~~~(60)~~ Ohio River.

(a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(c) The blue catfish daily creel limit shall be unlimited, except

that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

~~(60)~~~~(61)~~ Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

~~(61)~~~~(62)~~ Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

~~(62)~~~~(63)~~ Paintsville Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches;

~~(63)~~~~(64)~~ Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

~~(64)~~~~(65)~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;

~~(65)~~~~(66)~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

~~(66)~~~~(67)~~ Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;

~~(67)~~~~(68)~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;

~~(68)~~~~(69)~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

~~(69)~~~~(70)~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

~~(70)~~~~(71)~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait;

~~(72)~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

~~(71)~~~~(73)~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

~~(72)~~~~(74)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ~~ten (10)~~~~nine (9)~~ inches; daily creel limit, fifteen (15);

~~(73)~~~~(75)~~ Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;

~~(74)~~~~(76)~~ Trammel Creek, Allen County.

(a) Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).

(b) Rainbow trout daily limit, five (5);

~~(75)~~ Willisburg Park Pond, Washington County.

~~(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).~~

~~(b) Catfish daily creel limit, four (4).~~

~~(c) Sunfish daily creel limit, fifteen (15);~~

~~(76)~~~~(77)~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

~~(77)~~~~(78)~~ Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

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Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River ~~below Carr Creek Dam~~ and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds.

(1) The requirements established in paragraphs (a) through ~~(e)~~ ^(d) of this subsection shall apply to all bodies of water established in subsection (2) of this section:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); ~~and~~

(d) Rainbow trout daily creel limit, five (5); ~~and~~

(e) A person shall not possess shad or use shad as bait.

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) Bloomfield Park Lake, Nelson County;

(d) Bob Noble Park Lake, Nelson County;

(e) Brickyard Pond, Knox County;

(f) Camp Ernst, Boone County;

(g) Carlson Lake, Meade County in Fort Knox;

(h) Cherokee Park Lake, Jefferson County;

~~(i) Dickerson Lake, Meade County in Fort Knox;~~

~~(j) Easy Walker Park Pond, Montgomery County;~~

~~(k) Fisherman's Park lakes, Jefferson County;~~

(k) Flemingsburg Old Reservoir, Fleming County;

(l) Jacobson ~~Jacobson~~ Park Lake, Fayette County;

(m) James D. Beville Park Lake, Grayson County;

(n) Kentucky Horse Park lakes, Fayette County;

(o) Kess Creek Park Lake, Graves County;

(p) Kingdom Come State Park Lake, Harlan County;

~~(q) Lake Mingo, Jessamine County;~~

~~(r) Lake Pollywog, Grant County;~~

~~(s) Leary Lake, Grant County;~~

(t) Logan Hubble Park Lake, Lincoln County;

~~(u) Lower Sportsman's Lake, Franklin County;~~

~~(v) Lusby Lake, Scott County;~~

~~(w) Madisonville City Park lakes, Hopkins County;~~

~~(x) Martin County Lake, Martin County;~~

~~(y) Maysville-Mason County Recreation Park Lake, Mason County;~~

~~(z) Middleton Mills Long Pond, Kenton County;~~

~~(aa) Middleton Mills Shelterhouse Pond, Kenton County;~~

~~(ab) Mike Miller Park Lake, Marshall County;~~

~~(ac) Miles Park lakes, Jefferson County;~~

~~(ad) Millennium Park Pond, Boyle County;~~

~~(ae) Panther Creek Park Lake, Daviess County;~~

~~(af) Prisoner's [Prisoners] Lake, Kenton County;~~

~~(ag) Rotary Park Lake, Hickman County;~~

~~(ah) Scott County Park Lake, Scott County;~~

~~(ai) Southgate Lake, Campbell County;~~

~~(aj) Three Springs Lake, Warren County;~~

~~(ak) Tom Wallace Park Lake, Jefferson County;~~

~~(al) Upper Sportsman's Lake, Franklin County;~~

~~(am) Watterson Park Lake, Jefferson County;~~

~~(an) Waverly Park Lake, Jefferson County;~~

~~(ao) Waymond Morris Park Lake, Daviess County;~~

~~(ap) Whitehall Park Lake, Madison County; and~~

~~(aq) Yellow Creek Park Lake, Daviess County.~~

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 7, 2017

FILED WITH LRC: July 12, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's

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Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will move the 15-inch largemouth bass size limit at Beaver Lake back to the 12-inch statewide largemouth bass size limit, increase the crappie minimum length limit to 10 inches at Taylorsville Lake, change the special crappie, bluegill and other sunfish harvest regulations back to statewide regulations at Benjy Kinman Lake, add special harvest regulations to largemouth bass, sunfish and catfish at Willisburg Park Pond, add special harvest regulations to largemouth bass and bluegill at Beech Fork Reservoir, add special harvest regulations to blue catfish and channel catfish at Barren River Lake, lower the statewide daily creel limit on crappie from 30 to 20, change the statewide daily creel limit on rainbow trout to 8, change the statewide daily creel limit on brown trout to 1 with a 16-inch minimum size limit, add five new "Special Lakes and Ponds" and remove three, change the definition of "shad" to mean "a live gizzard or threadfin shad" and prohibit the use of live shad at all "Special Lakes and Ponds".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust size and creel limits at several lakes in order to provide a better number and size of fish available to anglers. In addition, the definition of "shad" is being changed to increase fishing opportunities by allowing anglers to use dead shad for bait at previously restricted lakes. Finally, five new "Special Lakes and Ponds" are being added along with the removal of three. This will result in a net increase of two urban fishing opportunities in the state.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing at the water bodies and for the species identified in 2(a) above will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the regulation changes identified in 2(a).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the species identified in 2(a) above will benefit in the long run from a higher quality sport fishery and improved angling opportunities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown; see 4 (a) and (b) above.

Expenditures (+/-): Minimal; see 4 (c) and (d) above.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 39:005. Definitions ~~for~~[related to] 401 KAR Chapter 39.

RELATES TO: KRS 224.1[224.04], 224.10, 224.46, 322.010(2), 40 C.F.R. Parts 260, 261, 262, 268, 270[260.40]

STATUTORY AUTHORITY: KRS 224.10-100, KRS 224.46

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-530(2) ~~authorizes the cabinet to promulgate administrative regulations to establish standards for the management of hazardous waste~~[This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste]. This administrative regulation establishes definitions for 401 KAR Chapter 39[defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 C.F.R. Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates]. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart, and[. These terms] have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 39[this chapter].

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 39 shall be as established in 40 C.F.R. 260.10[Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 39 shall have the meanings given in this Section]. (1) "Acute hazardous waste" is defined by 40 C.F.R. 260.10 and also includes the hazardous wastes listed in 401 KAR 39:060, Section 3(4), Table I with the assigned hazard code of (H)["100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source].

(2) "Administrator":

(a) Means "cabinet", as defined by KRS 224.1-010(9); or

(b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261.10;

2. 40 C.F.R. 261.11;

3. 40 C.F.R. 261.30(b);

4. 40 C.F.R. 261, Appendix IX;

5. 40 C.F.R. 262, Subpart H;

6. 40 C.F.R. 268.5;

7. 40 C.F.R. 268.6;

8. 40 C.F.R. 268.13;

9. 40 C.F.R. 268.40(b);

10. 40 C.F.R. 268.42(b);

11. 40 C.F.R. 268.44(a), (d), and (e);

12. 40 C.F.R. 270.2;

13. 40 C.F.R. 270.5;

14. 40 C.F.R. 270.10(e)(2) and (3);

15. 40 C.F.R. 270.10(f)(3); and

16. 40 C.F.R. 270.32(b)(2) and (3)["100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year].

(3)["Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected].

(4) ~~"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.~~

(5) ~~"Accumulated speculatively" means that a material is accumulated before being recycled.~~

(a) A material is not accumulated speculatively, if the person

accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That ~~— during the calendar year (commencing on January 1) — the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).~~

(b) ~~In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.~~

(6) ~~"Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.~~

(7) ~~"Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.~~

(8) ~~"Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.~~

(9) ~~"Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape~~].

(4) ~~"Agency" means "cabinet" as defined by KRS 224.1-010(9).~~

(5)[(10)] ~~"Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.~~

(11) ~~"Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.~~

(12) ~~"Ampule" means a small sealed glass container for one (1) dose of sterile medicine.~~

(13) ~~"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.~~

(14)] ~~"Application" is defined by 40 C.F.R. 270.2, and includes[means] the forms[form approved by the cabinet] for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapter 39, including Parts [Chapters 30 to 48. The term includes: Part] A and B of the permit application[(Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application].~~

(6) ~~"Appropriate regional administrator" means "state director".~~

(7) ~~"Appropriate regional EPA office" means "cabinet" as defined by KRS 224.1-010(9).~~

(8) ~~"Assistant administrator for solid waste and emergency response" means "cabinet" as defined by KRS 224.1-010(9).~~

(9)[(15)] ~~"Aquifer" means a geologic formation, group of~~

formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-840.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction,

or processing for materials recovery or as an ingredient.

(10) [(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" is defined by KRS 224.1-010(9) [shall have the meaning specified in KRS 224.01-010].

(11) [(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(12) "Closure" is defined by KRS 224.1-010(4) [(32) "Certificate" shall have the meaning specified in KRS 224.46-810].

(13) [(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of 401 KAR 39:090, Sections 1 through 4 [Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070].

(14) [(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" is defined by 40 C.F.R. 260.10 [means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled], and includes transport vehicles that are containers themselves, including [(for example,) tank trucks, tanker trailers, [and] rail tank cars[)], and containers placed on or in a transport vehicle.

(15) [(46) "Containment building" means a hazardous waste

management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47)] "Contaminate" means to introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, [Sections 5 and 6 of] 401 KAR 47:030, Sections 5 and 6, or 401 KAR 39:090, Section 1 [Section 8 of 401 KAR 34:060];

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, Sections 5 and 6 or 401 KAR 39:090, Section 1 [Section 8 of 401 KAR 34:060]; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(16)](48)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(17)](49)] "Contingency plan" is defined by 40 C.F.R. 260.10, and includes [means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment.] financial planning to identify resources for initiation of required [such] action [is a part of contingency plan development].

(18)](50)] "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51)] "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52)] "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53)] "Corrective action management unit" or "CAMU" means an area within a facility:

(a) [that is] Designated by the cabinet pursuant to 401 KAR 39:090, Section 1 [under 401 KAR 34:287], for the purpose of implementing corrective action requirements established in 401 KAR 39:090, [under Section 12 of 401 KAR 34:060 and] KRS 224.46-520, KRS 224.46.530, and RCRA 3008(h) [-A CAMU]

(b) Is [shall] only [be] used for the management of remediation wastes pursuant to implementing the [such] corrective action requirements at the facility.

(19)] "Department of Transportation" or "DOT" means the United States Department of Transportation.

(20)] "Director" means:

(a) "Cabinet" as defined by KRS 224.1-010(9); or

(b) 1. The director of the Federal Register as referenced in 40 C.F.R. 260.11;

2. The director of the U.S. DOT Office of Pipeline and Hazardous Materials Technology as referenced in 40 C.F.R. 261.21(a)(3)(ii)(A);

3. The director of the EPA Office of Resource Conservation and Recovery as referenced in 40 C.F.R. 262.21;

4. The director of the EPA's Collection Strategies Division as referenced in 40 C.F.R. 262, Appendix; and

5. The director of the U.S. DOT Office of Hazardous Materials Regulations as referenced in 40 C.F.R. 263.30(c)(2) and 40 C.F.R. 279.43(c)(3)(ii).

(21)](54)] "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open

container is placed during waste treatment.

(55)] "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56)] "Current closure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57)] "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58)] "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 C.F.R. 144.62(a), (b), and (c).

(59)] "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60)] "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 C.F.R. Part 271, and EPA permit (or a facility with interim status) in accordance with 40 C.F.R. Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 C.F.R. 261.6(c)(2) or 40 C.F.R. Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65)] "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(66)] "Disposal" is defined by KRS 224.1-010(10) [shall have the meaning specified in KRS 224.01-010].

(22)(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(69) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(70) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(72) "Draft permit" shall have the same meaning as "proposed permit".

(73) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(75) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(78) "Engineer" is defined by KRS 322.010(2) [shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices].

(23) "Environmental Protection Agency" or "EPA":

(a) Means "cabinet" as defined by KRS 224.1-010(9); or

(b) Means the Federal Environmental Protection Agency:

1. If used in the phrases:

a. "EPA or authorized state";

b. "EPA ID number";

c. "EPA hazardous waste codes";

d. "EPA form";

e. "EPA Region";

f. "EPA Acknowledgement of Consent";

g. "EPA test methods";

h. "EPA guidance"; and

i. "EPA publication; and

2. As referenced in:

a. 40 C.F.R. 260.1;

b. 40 C.F.R. 260.2

c. 40 C.F.R. 260.10 related to the definitions of:

(i) "Administrator";

(ii) "AES filing compliance date";

(iii) "Electronic import-export reporting compliance date";

(iv) "Electronic manifest";

(v) "Electronic manifest system";

(vi) "EPA hazardous waste number";

(vii) "EPA identification number"; and

(viii) "Replacement unit";

d. 40 C.F.R. 260.11(a) and (f);

e. 40 C.F.R. 261.1(a)(2);

f. 40 C.F.R. 261.1(b)(2)(i);

g. 40 C.F.R. 261.4(b)(11)(ii);

h. 40 C.F.R. 261.32(a) related to the listing of K069 only;

i. 40 C.F.R. 261.39(a)(5);

j. 40 C.F.R. 261.41;

k. 40 C.F.R. 261, Appendix IX;

l. 40 C.F.R. 262.20(a)(3)(ii);

m. 40 C.F.R. 262.21;

n. 40 C.F.R. 262.24(a)(3);

o. 40 C.F.R. 262.24(g);

p. 40 C.F.R. 262.25;

q. 40 C.F.R. 262.81 to 40 C.F.R. 262.84;

r. 40 C.F.R. 262, Appendix;

s. 40 C.F.R. 262, Subpart H;

t. 40 C.F.R. 263.20(a), (c), (e), and (f);

u. 40 C.F.R. 263, Subpart B;

v. 40 C.F.R. 264.12(a);

w. 40 C.F.R. 264.71(a)(2)(v);

x. 40 C.F.R. 264.71(a)(3);

y. 40 C.F.R. 264.71(d);

z. 40 C.F.R. 264.71(f)(4) and (5);

aa. 40 C.F.R. 264.71(h)(3);

bb. 40 C.F.R. 264.71(j);

cc. 40 C.F.R. 264.1082(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";

dd. 40 C.F.R. 265.12(a);

ee. 40 C.F.R. 265.71(a)(2)(v);

ff. 40 C.F.R. 265.71(a)(3);

gg. 40 C.F.R. 265.71(d);

hh. 40 C.F.R. 265.71(f)(4) and (5);

ii. 40 C.F.R. 265.71(h)(3);

jj. 40 C.F.R. 265.71(j);

kk. 40 C.F.R. 265.1083(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";

ll. 40 C.F.R. 266.103;

mm. 40 C.F.R. 266, Appendix IX;

nn. 40 C.F.R. 267.71(d);

oo. 40 C.F.R. 267.143(f)(2)(i)(A)(1);

pp. 40 C.F.R. 268.1(e)(3);

qq. 40 C.F.R. 268.2(j);

rr. 40 C.F.R. 268.7(e);

ss. 40 C.F.R. 270.1(a)(1);

tt. 40 C.F.R. 270.1(c)(7);

uu. 40 C.F.R. 270.2;

vv. 40 C.F.R. 270.5;

ww. 40 C.F.R. 270.6;

xx. 40 C.F.R. 270.10(e)(2);

yy. 40 C.F.R. 270.11(a)(3);

zz. 40 C.F.R. 270.12;

aaa. 40 C.F.R. 270.32(a) and (c);

bbb. 40 C.F.R. 270.51;

ccc. 40 C.F.R. 270.72(a)(5);

ddd. 40 C.F.R. 270.72(b)(5);

eee. 40 C.F.R. 124.6(e);

fff. 40 C.F.R. 124.10(c)(1)(ii); and

ggg. 40 C.F.R. 273.32(a)(3).

(24) "EPA Environmental Appeals Board" means "cabinet" as defined by KRS 224.1-010(9).

(25) "EPA Regional Administrator" means "cabinet" as defined by KRS 224.1-010(9).

(26) "EPA regional office" means "cabinet" as defined by KRS 224.1-010(9).

(27)(79) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) "EPA identification number" means the number assigned by EPA or the cabinet to each generator, transporter, or treatment, storage, or disposal facility.

(82) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by 401 KAR 34:275.

(84) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) "Existing boiler or industrial furnace" means [indicates] a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste, including the ancillary facilities to burn or to process the hazardous waste, or for which construction, [(including the ancillary facilities to burn or to process the hazardous waste,)] has commenced.

(28)(86) "Existing component" shall have the same meaning as "existing tank system."

(87) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(91) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) "Facility" is defined by 40 C.F.R. 260.10, and includes sites[means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one (1) or more landfills, surface impoundments, or combinations of

them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action pursuant to [under] KRS 224.46-520 and KRS 224.46-530.

(29)(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with 401 KAR 39:060, Section 5.

(30) "Federal Register":

(a) Means the United States Federal Register; or

(b) Means the "Administrative Register of Kentucky" as defined by KRS 13A.050, as referenced in 40 C.F.R. 260.20(c) and (e)[Section 7(3)(a)4c of 401 KAR 38:050].

(31)(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters that[which] are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes[:] 100-year flood plain[floodplain] and floodway.

(32)(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining flood plain[floodplain] that[which] provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year flood plain[floodplain] by more than one (1) foot.

(33)(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" is defined by KRS 224.1-010(13)[shall have

the meaning specified in KRS 224.01-010].

(34)[(112)] "Governing body" is defined by KRS 224.1-010(46)[shall have the same meaning as KRS 224.01-010].

(35)[(113)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(36)[(114)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" is defined by KRS 224.1-010(42)[shall have the meaning specified in KRS 224.01-010].

(37)[(117)] "Hazardous debris" means debris that contains a hazardous waste listed in, [401 KAR 31:040] or that exhibits a characteristic of hazardous waste identified in 401 KAR 39:060, Section 3[401 KAR 31:030].

(38)[(118)] "Hazardous waste" is defined by KRS 224.1-010(31)(b) and implemented through the criteria established in 40 C.F.R. 261.3[shall have the meaning specified in KRS 224.01-010].

(39)[(119)] "Hazardous waste constituent" means a constituent ~~that~~[which] caused the cabinet or EPA to list the hazardous waste [in 401 KAR 31:040], or a constituent listed in 401 KAR 39:060, Section 3 and 40 C.F.R. Part 261, Subpart D[Section 5(3) of 401 KAR 31:030].

(40)[(120)] "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is defined by 40 C.F.R. 260.10, and includes[a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include] ~~an~~[:] aboveground tank,[:] component,[:] existing tank system or existing component,[:] in-ground tank,[:] new tank system or new tank component,[:] on-ground tank,[:] tank system,[:] underground tank,[:] or unfit-for-use tank system.

(41)[(122)] "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(123) "Hazardous waste site or facility" means "hazardous waste management facility" as defined by 40 C.F.R. 270.2[any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit].

(42)[(124)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(125) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum jet or steam jet ejector.

(127) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) "In existence" shall have the same meaning as "existing."

(129) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(132) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) "In vapor service" shall have the same meaning as "in gas service".

(136) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) "Inactive portion" means that portion of a hazardous waste site or facility ~~that~~[which] was not operated after November 19, 1980.

(43) "Industrial solid waste" is defined by KRS 224.1-010(31)(a)(3).

(44)[(138)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;
 (e) Coke ovens;
 (f) Blast furnaces;
 (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
 (h) Titanium dioxide chloride process oxidation reactors;
 (i) Methane reforming furnaces;
 (j) Pulping liquor recovery furnaces;
 (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
 (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
 (m) other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.
 (143) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
 (144) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.
 (145) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.
 (146) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.
 (147) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 C.F.R. Part 270, and is treated as having a permit until final administrative disposition of the application is made.
 (148) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.
 (149) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
 (150) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.
 (151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.
 (152) "Key personnel" shall have the meaning specified in KRS 224.01-010.
 (153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.
 (154) "LDR" means land disposal restrictions.
 (155) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps].
 (156) "Land disposal" shall have the meaning specified in KRS 224.01-010.
 (157) "Land treatment facility" means a facility or part of a

facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest" is defined by KRS 224.1-010(37) and includes:

- (a) 1. The shipping document EPA Form 8700-22 as referenced in 40 C.F.R. 260.10; and
2. If applicable, EPA Form 8700-22A as referenced in 40

C.F.R. 260.10; or

(b) The electronic manifest[shall have the meaning specified in KRS 224.01-010].

(48)[(170)] "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174)] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(49) "Municipal solid waste" is defined by KRS 224.1-010(31)(a)4.

(50)[(175)] "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 C.F.R. Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private

right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192)] "Operator" is defined by 40 C.F.R. 260.10, and includes any operation of a facility[means any person responsible for overall operation of an] on-site or off-site [waste facility], and[including] any private contractor conducting operational activities at a federal facility.

(51)[(193)] "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194)] "Owner" is defined by 40 C.F.R. 260.10, and includes[means] any person who owns an on-site or off-site[waste] facility, or any part of a facility.

(52)[(195)] "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in

Section 1 of 401 KAR 38:060.

(202) "Permittee" means any person holding a valid permit issued by the cabinet or EPA to manage, treat, store, or dispose of hazardous waste.

(53)(203) "Person" is defined by KRS 224.1-010(17)(shall have the meaning specified in KRS 224.01-010).

(54)(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 C.F.R. 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Post-closure[Postclosure] monitoring and maintenance" is defined by KRS 224.1-010(18)(shall have the meaning specified in KRS 224.01-010).

(55) "Professional engineer is defined by KRS 322.010(3).

(56) "Professional land surveyor" is defined by KRS 322.010(9)(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070].

(57)(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the

facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010(19)(shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump].

(58) "Regional Administrator":

(a) Means "cabinet", as defined by KRS 224.1-010(9); or

(b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261, Appendix IX;

2. Note 1 to 40 C.F.R. 261.196;

3. 40 C.F.R. 262, Appendix, Item 18;

4. Note to 40 C.F.R. 264.196;

5. 40 C.F.R. 264.551 and 40 C.F.R. 264.552 related to CAMUs designated under RCRA Section 3008(h);

6. 40 C.F.R. 264.553 related to temporary units designated under RCRA Section 3008(h);

7. Note to 40 C.F.R. 265.196;

8. 40 C.F.R. 270.2 related to the definitions of:

a. "CAMU" under RCRA 3008(h);

b. "Director";

c. "Major facility"; and

d. "State/EPA agreement";

9. 40 C.F.R. 270.5;

10. 40 C.F.R. 270.10(e)(4);

11. 40 C.F.R. 270.10(f)(2);

12. 40 C.F.R. 270.10(g)(1)(i) and (iii);

13. 40 C.F.R. 270.11(a)(3)(ii);

14. 40 C.F.R. 270.51;

15. 40 C.F.R. 124.2;

16. 40 C.F.R. 124.3(c);

17. 40 C.F.R. 124.4(a)(2);

18. 40 C.F.R. 124.4(c)(2);

19. 40 C.F.R. 124.5(d)(3);

20. 40 C.F.R. 124.6(e);

21. 40 C.F.R. 124.10(b);

22. 40 C.F.R. 124.12(b);

23. 40 C.F.R. 124.16(b)(2);

24. 40 C.F.R. 124.18; and

25. 40 C.F.R. 124.19(225) "Qualified groundwater scientist"

means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to

recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(59)[(235)] "Remediation waste" is defined by 40 C.F.R. 260.10, and includes means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-530[224.46-520] for releases beyond the facility boundary.

(60)[(236)] "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapter 39[Chapters 34 through 36].

(61) "Resource Conservation and Recovery Act", "Act", "RCRA", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C":

(a) Means KRS Chapter 224:

1. If referring to a permit issued by the cabinet pursuant to KRS Chapter 224-46, including a RCRA permit, Part B permit, RCRA Part B permit, RCRA permit by rule, and RCRA standardized permit, except for a federally issued EPA permit or a permit issued by another authorized state; and

2. If referring to the Federal hazardous waste program as a whole;

(b) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 if referring to a specific section or provision of RCRA and as referenced in:

1. 40 C.F.R. 261, Appendix IX;

2. 40 C.F.R. 262, Subpart H;

3. 40 C.F.R. 262, Appendix;

4. 40 C.F.R. 270.1(a) and (b);

5. 40 C.F.R. 270.2 related to the definition of "RCRA";

6. 40 C.F.R. 270.14(d)(3); and

7. 40 C.F.R. 270.51(d) in the reference to "EPA-issued RCRA permit"; or

(c) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 and KRS Chapter 224, as appropriate, as referenced in 40 C.F.R. Part

124.

(62)[(240)] "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" is defined by 40 C.F.R. 270.2, and includes a cabinet order[means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events)] leading to compliance with KRS Chapter 224 and 401 KAR Chapter 39[Chapters 30 to 49].

(63) "Solid waste" means for the purposes of 401 KAR Chapter 39, waste that meets the criteria established in 40 C.F.R. 261.2[(245)] "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled].

(64)[(246)] "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" means[shall mean] any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. These[Such] units include any area at a facility at which solid wastes have been routinely and systematically released.

(65)[(256)] "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping into or on any land or water of hazardous wastes or materials which, if[when] spilled, become

hazardous wastes [into or on any land or water].

(66)[(264)] "Start-up" means the setting in operation of a hazardous waste management unit, hazardous secondary material management unit, or control device for any purpose.

(67) "State Director" means "cabinet", as defined by KRS 224.1-010(9)[(262)] "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge].

(68)[(264)] "Storage" is defined by KRS 224.1-010(28)[shall have the meaning specified in KRS 224.01-010].

(69)[(265)] "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere[-. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility].

(70)[(266)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284)] "Transportation" is defined by KRS 224.1-010(29), except for when used in the phrase "Department of Transportation" [shall have the meaning specified in KRS 224.01-010].

(71)[(285)] "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287)] "Treatment" is defined by KRS 224.1-010(30)[shall have the meaning specified in KRS 224.01-010].

(72) "United States Environmental Protection Agency", "U.S. Environmental Protection Agency", or "U.S. EPA" means "Environmental Protection Agency" as defined by this administrative regulation.

(73)[(288)] "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 C.F.R. Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table 1—Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) "Used oil" is defined by KRS 224.50-545(2)(a) [shall have the same meaning as KRS 224.50-545].

(74)(303) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered

as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(305) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(308) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" is defined by KRS 224.1-010(31) [shall have the meaning specified in KRS 224.01-010].

(75)(312) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) "Waste pile" means a noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not in a containment building [shall have the same meaning as "pile"]. [(315) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 C.F.R. 260.11, which is adopted in Section 3 of 401 KAR 30:010). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(316) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(317) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(320) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.	
Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
C.F.R.	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency

FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or

written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 39 for the management of hazardous waste.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms necessary to administer and implement the hazardous waste program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 by defining terms for 401 KAR Chapter 39 for the management of hazardous waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the hazardous waste program, implemented under the provisions of KRS 224.46-510 by defining the terms necessary to administer the program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by eliminating redundant definitions already defined by the federal regulations referenced in 401 KAR Chapter 39. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program under the Governor's Red Tape Initiative.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to define essential terms used by the hazardous waste program and eliminate duplicative terms already defined in the federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 224.10-100 by defining terms for 401 KAR Chapter 39 for the management of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in administration of the statutes and the hazardous waste program, implemented under the provisions of KRS 224.46-510, by defining the terms necessary to administer the program. This amendment is part of the consolidation and streamlining of administrative regulations implementing the hazardous waste program as a part of the Governor's Red Tape Initiative.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any actions as a result of this amendment as it only defines terms used in 401 KAR Chapter 39.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost entities identified in

question (3) any funds as it only defines terms used in 401 KAR Chapter 39.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will not accrue benefits as this amendment only defines terms used in 401 KAR Chapter 39.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulations only defines terms used in 401 KAR Chapter 39.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is not required by federal statute or federal regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue as it only defines terms. However, currently the division receives \$1.5M in federal grant funding to administer this program as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue as it only defines terms. However, currently the division receives \$1.5M in federal grant funding to administer this program as a whole.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 39:060. General requirements[Short-term fees].

RELATES TO: KRS 61.870, 61.884, 224.10, 224.46, 224.99, 40 C.F.R. Parts 124, 260, 261, 268, 270, 42 U.S.C. 2011 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135[224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) and 224.50-130 require the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the treatment, storage, disposal, and recycling of hazardous waste obtain a permit, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities, and the post-closure monitoring and maintenance of hazardous waste disposal facilities[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the general requirements for hazardous waste management systems[fee schedule for short-term permits and emergency identification numbers].

Section 1. Applicability.[(4)] This administrative regulation shall apply to a person, state, and federal agency who engages in the generation, treatment, storage, disposal, transportation, and management of waste defined or identified as hazardous in KRS Chapter 224 or 401 KAR Chapter 39, including hazardous substances spilled into the environment that meet the criteria of hazardous waste[applies to facilities which require emergency permits, emergency identification numbers and land treatment demonstration permits.

(2) The provisions of this administrative regulation shall apply to short-term permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. Short-term permit applications which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 16, 1988].

Section 2. Hazardous Waste Management System.[Fees. The fees are as follows:] (1) Except as established in subsections (2) through (6) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste management systems shall be as established in 40 C.F.R. Part 260, except 40 C.F.R. 260.34(a)(1) to (3), 260.10, and the last sentence of 40 C.F.R. 260.34(a).[Emergency permits – \$750;]

(2) The public notice requirements established in 40 C.F.R. 260.20(c) shall be replaced with the requirements established in paragraphs (a) and (b) of this subsection. If the tentative decision is to:

(a) Deny the petition, the cabinet shall notify the petitioner in writing and notify the public as required by subsection (4)(b) of this section; or

(b) Grant the petition, the cabinet shall propose a regulatory amendment, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A, including the rule making and public comment process contained therein.[and

treatment demonstration—\$5,500; and]

(3) The final decision making procedure established in 40 C.F.R. 260.20(e) shall be replaced with procedures established in paragraphs (a) and (b) of this subsection.

(a) The cabinet shall make a final decision after evaluating all public comments.

(b) The final decision shall be published either in the Kentucky Administrative Register, a daily or weekly major local newspaper of general circulation, or other methods reasonably calculated to give actual notice of the action to the persons potentially affected by it.

(4) A check made payable to the Kentucky State Treasurer in the amount required by KRS 224.46-014 shall be submitted to the cabinet with the submission of a completed petition for each hazardous waste that is petitioned for delisting.

(5) Upon approval by the cabinet of a petition to exclude a waste from a particular facility in accordance with 401 KAR Chapter 39, the excluded waste shall be subject to the disposal requirements established in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

(6) A variance shall be a written waiver from a provision of 401 KAR Chapters 39 and 40, upon the finding by the cabinet that the absence of the provision shall provide adequate protection to human health and the environment consistent with KRS Chapter 224.

(a)1. A request for variance from a requirement of 401 KAR Chapters 39 and 40 shall be submitted in a report in sufficient detail to provide to the cabinet the analyses, procedures, controls, and other pertinent data necessary to support the request for variance.

2. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions, including duration, limitations, and review procedures to provide adequate protection to human health and the environment.

(b) The cabinet may grant a variance or permit modification from the requirements of 401 KAR Chapters 39 and 40 if a waste permit requirement, or the process and equipment used, is determined by the cabinet to be:

1. Insignificant as a potential hazard to human health or the environment because of its small quantity, low concentration, physical, biological, or chemical characteristics, or method of operation used; or

2. Handled, processed, or disposed of pursuant to administrative regulations of another governmental agency, if the administrative regulations of other agencies meet the requirements of the waste management administrative regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(c) The cabinet shall not grant any request for a variance that shall:

1. Make the hazardous waste program less stringent than the federal hazardous waste management program;

2. Conflict with Kentucky Revised Statutes;

3. Conflict with a regulatory provision stating that no variance shall be granted; or

4. Vary the financial responsibility requirements in a manner conflicting with 401 KAR 39:090 and Section 3 of this administrative regulation.[Emergency identification numbers — \$100.]

Section 3. Identification and Listing of Hazardous Waste. (1) Except as established in subsections (2) through (8) of this section and Section 6 of this administrative regulation, the requirements for identification and listing of hazardous waste shall be as established in 40 C.F.R. Part 261, except 40 C.F.R. 261.4(b)(17), 40 C.F.R. 261.149, and 40 C.F.R. 261.150.

(2) Wastes shall be considered radioactive mixed wastes if the wastes contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act, 42 U.S.C. 2011 et. seq. Unless specifically exempted by 401 KAR 39:090, Section 3, radioactive mixed wastes shall be subject to the requirements of 401 KAR Chapters 39 and 40.

(3) Facilities required to comply with the export notification requirements referenced in 40 C.F.R. 261.39(a)(5) and 40 C.F.R.

261.41, shall also notify the cabinet.

(4) In addition to those substances listed in 40 C.F.R. 261, Subpart D, substances identified in Table I shall be listed hazardous wastes in the Commonwealth of Kentucky[Submittal-of Fees. The appropriate fee shall be submitted to the cabinet with the application. The check shall be made payable to the Kentucky State Treasurer].

Table I	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate) and related compounds (H)
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)
N101	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	Metal Parts Treater Residue associated with GB munitions or related wastes
N202	Metal Parts Treater Residue associated with VX munitions or related wastes
N203	Static Detonation Chamber Residue and Ash associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes
N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes
N701	Lab Wastes associated with treated GB wastes
N702	Lab Wastes associated with treated VX wastes
N703	Lab Wastes associated with treated H wastes

(5) In addition to the agricultural wastes established in 40 C.F.R. 261.4(b)(2), prunings and crop residues shall be agricultural wastes.

(6) In addition to the copy of the written state agreement required in 40 C.F.R. 261.4(b)(11)(ii) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(7) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 261.143(g), 40 C.F.R. 261.147(a)(1)(i), and 40 C.F.R. 261.147(b)(1)(i), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(8) In addition to the excluded hazardous wastes in 40 C.F.R. Part 261, Appendix IX, the cabinet grants an exclusion for the multi-source landfill leachate (EPA Hazardous Waste F039) generated after February 2, 2017, at Ashland Route 3 Landfill, Kentucky 3, Catlettsburg, Kentucky. This subsection shall serve as publication of the exclusion in accordance with Section 2(3)(b) of this administrative regulation.

(9) Any special waste identified as a hazardous waste as established in this administrative regulation shall be:

(a) Regulated pursuant to 401 KAR Chapter 39; and

(b) Exempt from the assessment of the Kentucky hazardous

waste management fund as established in KRS 224.46-580(7).

Section 4. Land Disposal Restrictions. Except as established in Section 6 of this administrative regulation, the requirements for land disposal restrictions shall be as established in 40 C.F.R. Part 268.

Section 5. Hazardous Waste Permit Programs and Procedures. (1) Except as established in subsections (2) through (18) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste permit programs and procedures shall be as established in 40 C.F.R. Parts 124 and 270, except 40 C.F.R. 270.1(c)(2)(ix), 40 C.F.R. 270.14(b)(18), and 40 C.F.R. 124, Subparts C and D.

(2) In addition to public notice requirements of 40 C.F.R. 124, the statement contained in KRS 224.40-310(5)(e) shall be included in each public notice.

(3) The applicant or facility shall reimburse the cabinet for the costs of newspaper advertisements, duplication, and postage for any required public notice or distribution to a mailing list.

(4) In addition to the requirements of 40 C.F.R. 124.10(a)(1)(iii), public notice shall be given if a hearing has been granted pursuant to 401 KAR Chapters 4 and 5 and 805 KAR Chapter 1.

(5) In addition to the federal appeal procedures referenced in 40 C.F.R. Parts 124 and 270, the cabinet appeal procedures shall be as established in KRS 224.10-420 through 224.10-470 and 400 KAR Chapter 1 for cabinet issued permits.

(6)(a) Any owner or operator required to obtain a permit shall complete and submit to the cabinet:

1. EPA form 8700-23 as referenced in 40 C.F.R. 270.13; and
2. Part A Application Addendum, DWM 7058A.

(b) If any of the information required by paragraph (a) of this subsection changes, the owner or operator shall submit revised forms, contained in paragraph (a) of this subsection, to the cabinet within sixty (60) days of the change, except as established in 401 KAR 39:080, Section 5(4).

(7) In addition to the noncompliance reporting requirements referenced in 40 C.F.R. 270.30(l)(6), the permittee shall immediately notify the cabinet of a release as established in KRS 224.1-400.

(8) In addition to the requirements established in 40 C.F.R. 270.10, any person applying for a construction and operation permit shall submit the information and documentation required in KRS 224.46-520(1) to include documentation of the applicant's decisions with respect to the proposal and justification for actions taken.

(9) In addition to the requirements of 40 C.F.R. Parts 124 and 270, for a hazardous waste disposal site or facility, that meets the criteria established in paragraph (a) of this subsection, a permit shall not be approved or issued by the cabinet, or a permit-by-rule applied, prior to the determinations specified in KRS 224.40-310(6).

(a) This subsection shall apply to an owner or operator of:

1. A hazardous waste disposal site or facility that meets the definition of a waste disposal facility as defined in KRS 224.40-310(1); and

2.a. New or proposed hazardous waste landfills, incinerators, or other sites or facilities for the land disposal of hazardous waste;

b. Existing hazardous waste landfills, incinerators, or other sites or facilities for the land disposal of hazardous waste that request a permit modification that does not meet the criteria of a Class 1 or 2 modification; or

c. New and existing hazardous waste treatment facilities and hazardous waste storage facilities that request a permit modification to include a disposal facility instead of or in addition to any permitted hazardous waste activity already conducted by the owner or operator.

(b) The applicant shall obtain local government approval for incinerators or land disposal facilities, as specified in KRS 224.40-310(7).

(10) An emergency permit shall specify that:

(a) All remaining hazardous waste and residues shall be

removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of 401 KAR 39:090;

(b) The permittee shall comply with the closure performance standards established in 401 KAR 39:090, Section 8; and

(c) The cabinet shall recover its actual and necessary costs associated with the permittee's failure to properly close the unit specified in the emergency permit.

(11) Upon collection of trial burn data, referenced in 40 C.F.R. 270.62(b)(9), the data shall become part of the Part B permit application.

(12)(a) In accordance with 401 KAR 39:090, the applicant shall establish financial assurance prior to issuance of a permit or sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(b) The amount of financial assurance established for closure or post-closure shall be in accordance with the plan prepared pursuant to 401 KAR 39:090.

(c) The owner or operator of the hazardous waste site or facility shall submit a demonstration of financial assurance as established in KRS 224.46-520(3) and 401 KAR 39:090.

(13) An owner or operator of existing hazardous waste sites or facilities that close under interim status without submitting Part B of the permit application shall, at a minimum, comply with the corrective action requirements established in 401 KAR 39:090, Section 1.

(14) In addition to the requirements in 40 C.F.R. 270.30 and KRS 224.40-330, any initial, renewal, or change to ownership permit application shall include the following background information and past compliance record:

(a) Organizational structure:

1. If the applicant is a sole proprietor, a detailed listing of any general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

2. If the applicant is a general or limited partnership, a detailed listing of:

a. Each of the partners and their respective interests, whether ownership or otherwise;

b. Any corporation, joint venture, limited liability corporation, general or limited partnership, or proprietorship in which any of the constituent partners of the applicant holds as much as or more than a twenty-five (25) percent interest whether ownership or otherwise; and

c. Any corporation, joint venture, proprietorship, limited liability corporation, or general or limited partnership that holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise in any of the non-individual constituent partners comprising the applicant;

3. If the applicant is a corporation, a detailed listing of:

a. The officers, directors, and major stockholders holding as much as or more than a twenty-five (25) percent;

b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest, either in stock or assets, in the applicant;

c. Any corporations that are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest, either in stock or assets; and

d. Any proprietorship, general or limited partnership, or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise; or

4. If the applicant is a joint venture, a detailed listing of:

a. All other joint ventures, and the respective interests, whether ownership or otherwise of each; and

b. Any proprietorship, general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

(b) For each individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules, or administrative regulations concerning the areas specified in subparagraphs 1. through 5. of this paragraph, whether

judicial or administrative proceedings are pending or completed, that have resulted or may result in either criminal convictions or civil or administrative fines as much as or more than \$1,000:

1. Solid or hazardous waste management;

2. Air pollution;

3. Water;

4. Occupational Safety and Health Administration with respect to hazardous materials or hazardous substances; and

5. Transportation with respect to hazardous materials or hazardous substances; and

(c) For each individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.

(15) The owner or operator of the hazardous waste site or facility shall complete and submit an evaluation of subsurface geologic formations and surface topography for solution or karst terrain.

(a) If the owner or operator demonstrates to the cabinet that the facility is not underlain by soluble limestone, the owner or operator shall be exempt from the requirements of this subsection.

(b) Except as established in paragraph (a) of this subsection, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence, which is characteristic of areas underlain by soluble limestone; and

2. Contamination into or through any fractures, channels, or solution features shall not occur.

(c) Except as established in paragraph (a) of this subsection, the owner or operator shall:

1.a. Establish the presence and extent of all fractures, channels, and solution features in the bedrock beneath the facility and describe how these features will be sealed, filled, isolated, or otherwise neutralized to prevent subsidence; and

b. Describe how solution features will be monitored to demonstrate compliance with the criteria established in paragraph (b) of this subsection; or

2.a. Design, operate, and maintain a double-liner system, which shall be installed beneath the facility and that includes a leak detection system that meets the criteria established in paragraph (b) of this subsection; and

b. Meet all the specifications of 401 KAR 39:090, Section 1, for the design of the double-lined facility as applicable.

(16) The owner or operator of the hazardous waste site or facility shall submit the actual test data demonstrating the liner is or will be compatible with the waste, if applicable.

(17)(a) The applicability established in 40 C.F.R. 124.31(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.31 shall apply to all RCRA part B applications seeking:

a. Initial permits for hazardous waste management units;

b. Renewal of permits for units with a significant change in facility operations;

c. A RCRA standardized permit as referenced in 40 C.F.R. 270, Subpart J; or

d. Renewal of a standardized permit for units with a significant change in facility operations, as defined in 40 C.F.R. 124.211(c).

2. The requirements in 40 C.F.R. 124.31 shall not apply to permit modifications pursuant to 40 C.F.R. 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) The applicability established in 40 C.F.R. 124.32(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.32 shall apply to RCRA part B applications seeking:

a. Initial permits for hazardous waste management units; or

b. Renewal of permits for units pursuant to 40 C.F.R. 270.51.

2. The requirements in 40 C.F.R. 124.32 shall not apply to hazardous waste units for which facility owners or operators are seeking:

a. A RCRA standardized permit referenced in 40 C.F.R. part 270, subpart J;

b. Permit modifications pursuant to 40 C.F.R. 270.42; or

c. Permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) The applicability established in 40 C.F.R. 124.33(a) shall be replaced with this paragraph. The requirements in 40 C.F.R. 124.33 shall apply to applications seeking RCRA permits for hazardous waste management units.

(18) The biennial reporting referenced in 40 C.F.R. 270.60(a)(3)(v) shall be replaced with annual reporting.

Section 6. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance or pollutant or contaminant to the environment in a quantity that may present an imminent or substantial danger to human health or the environment, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line as required by KRS 224.1-400 and provide a written report of the incident or accident within seven (7) days of the release, if required by the cabinet pursuant to KRS 224.1-400.

(2) Dates included in the federal regulations referenced in 401 KAR Chapter 39 that occurred before the effective date of this administrative regulation shall not be construed as creating a retroactive right or obligation in accordance with 401 KAR Chapter 39 if that right or obligation did not exist in this administrative regulation prior to the date the federal regulations were referenced.

(3) If a right or obligation existed in accordance with federal regulations based on a date in federal regulations, and there is a period from the date cited in the text until the date the requirements initially became effective in 401 KAR Chapter 39, these administrative regulations shall not contravene or countermand the legal application of the federal regulation for that period.

(4)(a) For initial issuance, modification, revocation and reissuance, or termination, of a permit, the applicable administrative regulations shall be those regulatory provisions that are in effect upon the date that the cabinet makes a final determination upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued.

(b) The procedures that shall be used for permit modification, revocation and reissuance, or termination shall be those regulatory procedures that are in effect upon the date of the cabinet's final determination.

(5) In addition to Section 7003 of RCRA, KRS 224.10-410 shall apply.

(6) In addition to Section 3008 of RCRA, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(7) In addition to Section 3004 of RCRA, KRS 224.46-520, 401 KAR 39:090, and Section 4 of this administrative regulation shall apply.

(8)(a) As referenced in 401 KAR Chapter 39, the requirements in Section 3010 of RCRA shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance, to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in 401 KAR 39:080, Section 1(2) and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulation.

(9) Any person who submits information to the cabinet pursuant to KAR Chapters 39 and 40, may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures established in KRS 224.10-212 and 400 KAR 1:060.

(a) Information covered by a claim shall be disclosed by the cabinet as established in 400 KAR 1:060 and KRS Chapter 61 except that information required by 401 KAR 39:080, Section 1, which is submitted in notification of intent to export a hazardous waste shall be provided to the U.S. Department of State, U.S. EPA, and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

(b) If a claim does not accompany the information received by

the cabinet, it may be made available to the public without further notice to the person submitting it.

(10) A person shall not deliver hazardous waste to a facility for treatment, storage, or disposal, unless the owner or operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980;

(b) Qualified for interim status in accordance with 401 KAR 39:090, Section 2; or

(c) Been granted a hazardous waste site or facility permit by the cabinet.

(11) A person shall not engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet in accordance with KRS 224.46-520(1).

(12) Issuance of a federal permit to own or operate a hazardous waste site or facility shall not relieve the owner or operator of the responsibility to comply with the requirements of 401 KAR Chapter 39.

(13) All permit forms or permit submissions to the cabinet shall include:

(a) One (1) original and two (2) paper copies of the form;

(b) One (1) electronic copy, which shall be an exact match to the original;

(c) Up to seven (7) additional copies of the application, if requested by the cabinet for public review;

(d) The Agency Interest (AI) number, if known; and

(e) A signature of the authorized representative.

(14) In addition to 40 C.F.R. 270.43, the cabinet may terminate a permit during its term or deny a permit renewal application for a violation of any requirement of KRS Chapter 224 or 401 KAR Chapter 39.

(15) In addition to 40 C.F.R. 270.50, a permit for the nerve agents specified in KRS 224.50-130 and Section 3 of this administrative regulation shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified if necessary, as established in Section 5 of this administrative regulation.

(16) The permittee shall have paid the applicable fees due as established in KRS 224.46 and 401 KAR 39:120.

(17) Except for closure, post-closure, and corrective action permit applications, failure to submit a requested application on time, or to submit in full the information required by 401 KAR Chapter 39, shall result in denial of the application in accordance with this administrative regulation.

(18) Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions pursuant to KRS 224.40-330.

(19) The provisions of 401 KAR Chapter 39 shall be compatible with and complementary to each other. If an administrative regulation is found to be contradictory, the more stringent provision shall apply.

(20) The citations to Sections 301, 307, and 402 of the Clean Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(21) The citations to the Clean Air Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

(22) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9 and 10, and 805 KAR Chapter 1.

(23) In addition to 40 C.F.R. 258 and Subtitle D, 401 KAR Chapters 45, 47, and 48 shall apply.

(24) In addition to Subtitle C of RCRA, KRS 224.46 shall apply.

(25) In addition to 3008h of RCRA, KRS 224.10-100(18), KRS 224.99-010(5) and KRS 224.46-530 shall apply.

Section 7. Incorporation by Reference. (1) "Part A Application Addendum", DWM 7058A, June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort,

Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for hazardous waste management systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for hazardous waste management systems. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, and disposal standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous wastes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing the general requirements for hazardous waste management systems rather than only establishing fees as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program. In addition, this amendment will adopt the new

federal definition of solid waste.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the general requirements for hazardous waste management systems. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, and to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous wastes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, and 132 transporters in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility is required to make a hazardous waste determination. Based on the new federal definition of solid waste, some waste that has been determined as hazardous waste in the past may now be nonhazardous waste, requiring a new waste determination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if a previously considered hazardous waste is determined be nonhazardous under the new federal definition of solid waste and exemptions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state regulations, and in those cases where a hazardous waste is now determined to be nonhazardous or exempt under the new federal definition of solid waste, an owner or operator would have decreased costs for transport and disposal.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general

funds and grants from the federal Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 260, 261, 268, 270 and 124 and KRS 224.10 and 224.46.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$1.5M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124

2. State compliance standards. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, and 224.50-135

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or

different requirements than those required by the federal regulation. Section 2 replaces the federal decision making and hearing procedures with cabinet decision making and hearing procedures, and establishes variance request procedures. In addition, Section 2 requires a petition fee be submitted to the cabinet for delisting, and subjects waste excluded to be regulated under 401 KAR Chapter 47. Section 3 clarifies radioactive mixed waste, requires cabinet notification for exports, and identifies additional substances as listed hazardous wastes. Section 5 establishes additional public notice requirements, replaces federal appeal procedures with the cabinet's appeal procedures, requires revision and submission of cabinet form for Part A permits, establishes emergency permit conditions, requires compliance with regards to corrective action for interim status facilities, requires the inclusion of background information and past compliance record, requires an evaluation of subsurface geologic formations and surface topography for solution or karst terrain, and requires test data for liner. Sections 5 and 6 require cabinet notification for releases, establish prerequisites of a permit, including standards for closure, requirements for monitoring and maintenance and remedial measures, and establish financial responsibility requirements. Section 6 establishes hearing procedures and penalties to be implemented by the cabinet, allows cabinet abatement orders, establishes cabinet's specific authority over hazardous waste, requires hazardous waste registration with the cabinet, establishes information submitted as public record except for confidential business information, prohibits hazardous waste management under certain conditions, requires copies of the forms be submitted to the cabinet, establishes the right of the cabinet to terminate a permit for violations, establishes that permit for nerve agents shall be reviewed every five (5) years.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 39:080. Hazardous waste handlers[Recycling and universal waste fees].

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. Parts 260 through 267, 270, 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545[, 224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 requires that used automotive and industrial oil shall be recycled or disposed of properly[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for hazardous waste handlers[fee schedule for permits for recyclers of hazardous waste and petitions to include additional wastes under 401 KAR Chapter 43].

Section 1. Generators of Hazardous Waste.[Applicability:] (1) Except as established in subsections (2) through (11) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to generators of hazardous waste shall be as established in 40 C.F.R. Part 262, except 40 C.F.R. 262.10(k)[applies to all persons considered to be recyclers in accordance with the criteria contained in Section 1 of 401 KAR 35:010 and 401 KAR Chapter 36].

(2) Generators shall register with the cabinet by completing and submitting:

(a) EPA form 8700-12 as referenced in 40 C.F.R. Parts 260 through 267, 270, 273, and 279; and

(b) Registration of Hazardous Waste Activity Addendum, DWM 7037A.

(3) The registration established in subsection (2) of this section shall be submitted annually to the cabinet at least forty-five (45) days prior to the expiration date shown on the certificate of registration.

(4)(a) A generator who has not received an EPA identification number may obtain one by registering with the cabinet as established in subsection (2) of this section.

(b) Upon receiving the request and reviewing the information, the cabinet shall assign an EPA identification number to the generator.

(5)(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the registration submitted pursuant to subsection (2) of this section.

(b) If any information submitted in accordance with subsection (2) of this section changes, the generator shall modify and resubmit the form that includes the changes to the cabinet no later than thirty (30) days following the change.

(6) A hazardous waste generator that no longer generates hazardous waste on site, closes its facility, or goes out of business, shall complete and submit to the cabinet the Request to be Removed from the Hazardous Waste Handler List, DWM 7086, within ninety (90) days after the last date of hazardous waste generation.

(7)(a) A hazardous waste generator may only treat on-site in tanks, containers, containment buildings, and on drip pads, if:

1. A generator complies with the hazardous waste accumulation provisions of this section;

2. The generator notifies the cabinet of the intent to treat hazardous waste as required by subsection (2) of this section; and

3. The cabinet issues written approval to the generator.

(b)1. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, or the environment in a manner consistent with the purpose of the waste management administrative regulations and KRS Chapter 224.

2. If the cabinet determines that the approved treatment is not protective of human health, safety, or the environment, the cabinet shall issue a written revocation of the approval and all treatment activities shall cease.

(8)(a) Generators, except for very small quantity generators, shall prepare a Hazardous Waste Annual Report for the cabinet annually by completing and submitting:

1. EPA form 8700-13 A/B as referenced in 40 C.F.R. 262.41(a), 264.75, 265.75, and 267.75; and

2. Hazardous Waste Annual Report Addendum, DWM 7072A.

(b) Each generator, except for very small quantity generators, shall submit a copy of the Hazardous Waste Annual Report established in paragraph (a) of this subsection as established in KRS 224.46-510(1)(h).

(9) A generator, except for very small quantity generators, shall not offer hazardous waste to a transporter or to a treatment, storage, or disposal facility that has not received an EPA identification number.

(10)(a) A large quantity generator or small quantity generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste until the generator has:

1. Registered with the cabinet as established in subsection (2) of this section; and

2. Received an EPA identification number.

(b) A very small quantity generator shall not treat hazardous waste until the generator has registered with the cabinet as established in subsection (2) of this section.

(11) The requirement for the container marking wording to state "Federal Law Prohibits" referenced in 40 C.F.R. 262.32(b), shall be replaced with "Federal and State Law Prohibit"[This administrative regulation applies to all persons who petition the cabinet to include additional wastes as a universal waste under 401 KAR Chapter 43].

Section 2. Transporters of Hazardous Waste.[Schedule of Fees for Recycling:] (1) Except as established in subsections (2) and (3) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to transporters of hazardous waste shall be as established in 40 C.F.R. Part 263[An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is \$300. Generators who generate less than 100 kg of hazardous waste in a calendar month (that is, conditionally exempt small quantity generators) shall be exempt from the registration fee for recycling activities].

(2)(a) A transporter shall not transport hazardous wastes or used oil within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet, any other RCRA authorized state, or from the Federal Environmental Protection Agency.

(b) To obtain an EPA identification number from the cabinet, a transporter shall:

1. For a transporter who is also a hazardous waste generator or used oil transporter, register with the cabinet as established in Section 1(2) and (3) of this administrative regulation; or

2. For a transporter that is not also a hazardous waste generator or used oil transporter, complete and submit the Registration of Hazardous Waste Transportation Activity, DWM 7053.

(3) In addition to 40 C.F.R. 263.30(c), an air, rail, highway, or water transporter that has any knowledge of a release or threatened release of a hazardous substance or pollutant or contaminant shall notify and report to the cabinet as established in Section 5(1) of this administrative regulation[No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply].

Section 3. Universal Waste. (1) Except as established in subsections (2) through (4) of this section and Section 5 of this administrative regulation, the requirements for standards for universal waste management shall be as established in 40 Part C.F.R. 273.

(2)(a) Prior to conducting on-site treatment of their own accumulated universal waste, a large or small quantity handler shall be subject to the requirements of Section 1 of this administrative regulation, including the requirement for on-site treatment by generators.

(b) Prior to conducting on-site treatment of accumulated universal waste received from off-site, a large or small quantity handler shall be subject to the requirements of 401 KAR 39:060 and 401 KAR 39:090.

(3) Breaking, disassembling, crushing, or otherwise damaging, intentionally or unintentionally, universal waste lamps shall render them a hazardous waste.

(4) A large quantity handler of universal waste shall register and report as established in Section 1 of this administrative regulation[Fees for Universal Waste Petitions. Any person seeking to add a hazardous waste or a category of hazardous waste to 401 KAR Chapter 43 shall submit a \$2,500 fee with the petition required in 401 KAR 43:070].

Section 4. Used Oil. (1) Except as established in subsections (2) through (9) of this section and Section 5 of this administrative regulation, the requirements for standards for the management of used oil shall be as established in 40 C.F.R. Part 279, except 40 C.F.R. 279.82.

(2) In addition to 40 C.F.R. 279.22 and 40 C.F.R. 279.52, KRS 224.1-400(11) and (12) and KRS 224.1-405 shall apply.

(3) An owner or operator of each used oil collection center shall:

(a) Register initially with the cabinet as established in Section 1(2) of this administrative regulation; and

(b) Complete and submit a Hazardous Waste Annual Report annually as established in Section 1(8) of this administrative regulation.

(4) A used oil processor, recycler, re-refiner, burner, or marketer that has not received an EPA identification number shall register with the cabinet as established in Section 1(2) of this administrative regulation.

(5) In addition to 40 C.F.R. 279.54, upon detection of a release of used oil to the environment, not subject to the requirements established in 401 KAR 42:060, an owner or operator shall notify and report to the cabinet pursuant to Section 5(1) of this administrative regulation.

(6) In addition to 40 C.F.R. 279.43, 601 KAR 1:025 and Section 5(1) of this administrative regulation shall apply.

(7) Used oil shall not be used as a dust suppressant within the Commonwealth of Kentucky.

(8) In addition to 40 C.F.R. Part 280, 401 KAR Chapter 42 shall apply.

(9) The citations to Sections 307(b) and 402 of the Clean Water Act referenced in 40 C.F.R. Part 279 shall also include 401 KAR Chapter 5[Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall be made payable to the Kentucky State Treasurer].

Section 5. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum to the environment in a quantity that may present an imminent or substantial danger to human health or the environment as established in KRS 224.1-400, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line and provide a written report of the incident or accident within seven (7) days of the release, pursuant to KRS 224.1-400.

(2) In addition to Section 3008 of RCRA, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(3) In addition to Subtitle C of RCRA, KRS 224.46 shall apply.

(4)(a) As referenced in 401 KAR Chapter 39, the requirements in Section 3010 of RCRA shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in Section 1(2) of this administrative regulation and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulations.

(5) In addition to 40 C.F.R. Part 257 and 40 C.F.R. Part 258, 401 KAR Chapters 45, 47, and 48 shall apply.

Section 6. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Hazardous Waste Annual Report Addendum", DWM 7072A, June 2017;

(b) "Registration of Hazardous Waste Activity Addendum", DWM 7037A, June 2017;

(c) "Registration of Hazardous Waste Transportation Activity", DWM 7053, June 2017; and

(d) "Request to be Removed from the Hazardous Waste Handler List", DWM 7086, June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. until 4:30 p.m.

(3) This material may also be obtained on the division's Web

site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for hazardous waste handlers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for hazardous waste handlers. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545, for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing the standards for hazardous waste handlers rather than only establishing recycling and universal waste fees as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program. In addition, this amendment will adopt the new federal generator improvement rule. The generator improvement rule will allow a hazardous waste generator to avoid increased burden of a higher generator when generating episodic

waste if the waste is managed properly, and allow very small quantity generators to send their hazardous waste to a large quantity generator under the control of the same person.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the standards for hazardous waste handlers. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for hazardous waste.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545, for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility is required to make a hazardous waste determination. Based on the new federal definition of solid waste, some waste that has been determined as hazardous waste in the past may now be nonhazardous waste, requiring a new waste determination. Therefore, facilities that might have been small quantity generators may now be considered very small quantity generators. In addition, small quantity generators would be required to report annually.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if: (a) A previously considered hazardous waste is determined to be nonhazardous under the new federal definition of solid waste and exemptions; (b) A very small quantity generator or small quantity generator generated episodic hazardous waste and would not be required to modify into a more stringent regulatory category under the new federal generator improvement rule; and (c) A very small quantity generator would be allowed to consolidate hazardous waste with a large quantity generator under the control of the same person under the new federal generator improvement rule.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state

regulations, and in those cases where a hazardous waste is now determined to be nonhazardous or exempt under the new federal definition of solid waste, an owner or operator would have decreased costs for transport and disposal. In addition, a very small quantity generator and small quantity generator who generate episodic hazardous waste would not be required to modify into a more stringent regulatory category under the new federal generator improvement rule. Lastly, very small quantity generators would have the ability to consolidate hazardous waste with a large quantity generator under the control of the same person.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous waste, as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 262, 263, 273, and 279 and KRS 224.10 and 224.46.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$1.5M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279.
2. State compliance standards. KRS 224.10-100, 224.46-510, 224.50-545.
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. Section 1 requires generators, including treatment on-site, to register with the cabinet annually rather than biennially or every four years for small quantity generators, and to include anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes on an addendum. In addition, it establishes procedures for generators to obtain an EPA identification number from the cabinet, establishes procedures for hazardous waste generators to be removed from the handler list, requires an annual report on hazardous waste instead of biennial reporting, and requires the annual report to be sent to local county governments. Section 2 establishes procedures for transporters to obtain an EPA identification number and register with the cabinet. Section 3 exempts on-site treatment of accumulated universal waste from being considered a universal waste and establishes requirements for on-site treatment as a hazardous waste. In addition, Section 3 establishes universal waste lamps as a hazardous waste if broken. Section 4 requires used oil collection centers to register with the cabinet, establishes procedures for registration and obtaining an EPA identification number, and prohibits used oil from being used as a dust suppressant. Section 5 requires cabinet notification for releases, establishes hearing procedures and penalties to be implemented by the cabinet, and replaces the federal requirement with a state requirement to register once a hazardous waste is listed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements, except for universal waste lamps. Breakage or damage to universal waste lamps, requires a hazardous waste determination and based on the composition of the lamps no longer allows them to be considered a universal waste.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 39:090. Hazardous waste permit program[Postclosure fees].

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. 264, 265, 266, 267

STATUTORY AUTHORITY: KRS 224.46-520[224.10-100, 224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish corrective action requirements, and to establish minimum standards for closure for all facilities and the

post-closure monitoring and maintenance of hazardous waste disposal facilities[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions]. KRS 224.50-130 requires the Energy and Environment Cabinet to list additional compounds as hazardous wastes and to consider additional criteria in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage or disposal of nerve agents[KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for the hazardous waste permit program[fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities].

Section 1. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Except as established in subsections (1) through (7) of this section and Sections 5 through 9 of this administrative regulation, standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 264, except 40 C.F.R. 264.1(f), 40 C.F.R. 264.1(g)(12), 40 C.F.R. 264.15(b)(5), 40 C.F.R. 264.149, 40 C.F.R. 264.150, 40 C.F.R. 264.301(l), 40 C.F.R. 264.1030(d), 40 C.F.R. 264.1050(g), and 40 C.F.R. 264.1080(e) to (g)[Applicability].

(1) The Maximum Concentration of Constituents for Groundwater Protection in 40 C.F.R. 264.94, Table 1 shall be replaced with Table 1 of this subsection.

Table 1: Maximum Concentration of Constituents for Groundwater Protection	
Maximum Contaminant Constituent	Level (mg/l)
Antimony	0.006
Arsenic	0.01
Barium	2.0
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Cadmium	0.005
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Dibromochloropropane	0.0002
1,2-Dichloroethane	0.005
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane (Methylene chloride)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
1,2-Dichloropropane	0.005
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Endothall	0.1
Endrin	0.002
Ethylene dibromide (1,2-Dibromoethane)	0.00005
Fluoride	4.0
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lead	0.15
Lindane	0.0002
Mercury	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001

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Selenium	0.05
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Toxaphene	0.003
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
1,2,4-Trichlorobenzene	0.07
1,1,2-Trichloroethane	0.005
2,4,5-TP Silvex	0.01
2,3,7,8-TCDD (Dioxin)	3.0×10^{-8}
Vinyl chloride	0.002

[This administrative regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an operation permit for a landfill required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:120.]

(2) In addition to 40 C.F.R. 264.143(e)(1), 40 C.F.R. 264.145(e)(1), 40 C.F.R. 264.147(a)(1)(ii), and 40 C.F.R. 264.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer that is authorized to transact insurance in Kentucky, except as KRS 304.11-030 provides otherwise.

(3) The reference in 40 C.F.R. 264.570 and 265.440(a) to "December 6, 1990", shall be replaced with "August 18, 1994", for drip pads where F034 or F035 wastes are handled.

(4) The reference in 40 C.F.R. 264.570 to "December 24, 1992", shall be replaced with "August 26, 1996", for drip pads where F034 or F035 wastes are handled.

(5) A tank system that stores or treats materials that become hazardous waste subsequent to March 10, 1988, shall conduct an assessment of any existing tank system's integrity within twelve (12) months after the date the waste becomes a hazardous waste.

(6) In addition to the requirements in 40 C.F.R. 264.304, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1).

(7) In addition to the requirements in 40 C.F.R. 264.226, 264.254, and 264.303, applicants shall demonstrate that the admixed liner is structurally sound and chemically resistant to the waste placed in it to ensure that the liner is capable of supporting the waste without cracking, disintegrating, or allowing waste or leachate to escape. The provisions of this administrative regulation

shall apply to post-closure permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. Postclosure permit applications which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 26, 1988].

Section 2. Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities. (1) Except as established in subsections (2) through (4) of this section and Sections 5 through 9 of this administrative regulation, interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 265, except 40 C.F.R. 265.1(c)(4), 40 C.F.R. 265.1(c)(15), 40 C.F.R. 265.149, 40 C.F.R. 265.150, 40 C.F.R. 265.1030(c), 40 C.F.R. 265.1050(f), and 40 C.F.R. 265.1080(e) to (g)[Filing Fees].

(2) In addition to the requirements in 40 C.F.R. 265.303, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1)[Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of \$4,000].

(3) In addition to 40 C.F.R. 265.143(d)(1), 40 C.F.R. 265.145(d)(1), 40 C.F.R. 265.147(a)(1)(ii), and 40 C.F.R. 265.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer who is authorized to transact insurance in Kentucky, except as KRS 304.11-030 provides otherwise.

(4) As of January 12, 1991, a facility that failed to qualify for federal interim status for any waste code promulgated pursuant to HSWA or that lost interim status for failing to certify as required by HSWA for any newly promulgated waste code, shall also be denied interim status pursuant to this administrative regulation.

Section 3. Specific Hazardous Wastes and Facilities. Except as established in subsections (1) through (3) of this section and Sections 5 through 9 of this administrative regulation, standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities shall be as established in 40 C.F.R. Part 266[Review Fee].

(1) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain in 40 C.F.R. Part 266, Appendix I, Table I-D shall be replaced with Table I-D in this subsection.

Table I-D: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain								
Terrain adjusted eff. stack ht. (m)	Values for use in urban areas				Values for use in rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	4.6E-02	1.1E-01	1.7E-02	8.2E-02	2.4E-02	5.8E-02	8.6E-03	4.3E-02
6	5.4E-02	1.3E-01	1.9E-02	9.4E-02	2.8E-02	6.6E-02	1.0E-02	5.0E-02
8	6.0E-02	1.4E-01	2.2E-02	1.1E-01	3.2E-02	7.6E-02	1.1E-02	5.6E-02
10	6.8E-02	1.6E-01	2.4E-02	1.2E-01	3.6E-02	8.6E-02	1.3E-02	6.4E-02
12	7.6E-02	1.8E-01	2.7E-02	1.4E-01	4.3E-02	1.1E-01	1.6E-02	7.8E-02
14	8.6E-02	2.1E-01	3.1E-02	1.5E-01	5.4E-02	1.3E-01	2.0E-02	9.6E-02
16	9.6E-02	2.3E-01	3.5E-02	1.7E-01	6.8E-02	1.6E-01	2.4E-02	1.2E-01
18	1.1E-01	2.6E-01	4.0E-02	2.0E-01	8.2E-02	2.0E-01	3.0E-02	1.5E-01
20	1.2E-01	3.0E-01	4.4E-02	2.2E-01	1.0E-01	2.5E-01	3.7E-02	1.9E-01
22	1.4E-01	3.4E-01	5.0E-02	2.5E-01	1.3E-01	3.2E-01	4.8E-02	2.4E-01
24	1.6E-01	3.9E-01	5.8E-02	2.8E-01	1.7E-01	4.0E-01	6.0E-02	3.0E-01
26	1.8E-01	4.3E-01	6.4E-02	3.2E-01	2.1E-01	5.0E-01	7.6E-02	3.9E-01
28	2.0E-01	4.8E-01	7.2E-02	3.6E-01	2.7E-01	6.4E-01	9.8E-02	5.0E-01
30	2.3E-01	5.4E-01	8.2E-02	4.0E-01	3.5E-01	8.2E-01	1.2E-01	6.2E-01
35	3.0E-01	6.8E-01	1.0E-01	5.4E-01	5.4E-01	1.3E+00	1.9E-01	9.6E-01
40	3.6E-01	9.0E-01	1.3E-01	6.8E-01	8.2E-01	2.0E+00	3.0E-01	1.5E+00
45	4.6E-01	1.1E+00	1.7E-01	8.6E-01	1.1E+00	2.8E+00	4.2E-01	2.1E+00
50	6.0E-01	1.4E+00	2.2E-01	1.1E+00	1.5E+00	3.7E+00	5.4E-01	2.8E+00
55	7.6E-01	1.8E+00	2.7E-01	1.4E+00	2.0E+00	5.0E+00	7.2E-01	3.6E+00

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60	9.4E-01	2.2E+00	3.4E-01	1.7E+00	2.7E+00	6.4E+00	9.6E-01	4.8E+00
65	1.1E+00	2.8E+00	4.2E-01	2.1E+00	3.6E+00	8.6E+00	1.3E+00	6.4E+00
70	1.3E+00	3.1E+00	4.6E-01	2.4E+00	4.3E+00	1.0E+01	1.5E+00	7.6E+00
75	1.5E+00	3.6E+00	5.4E-01	2.7E+00	5.0E+00	1.2E+01	1.8E+00	9.0E+00
80	1.7E+00	4.0E+00	6.0E-01	3.0E+00	6.0E+00	1.4E+01	2.2E+00	1.1E+01
85	1.9E+00	4.6E+00	6.8E-01	3.4E+00	7.2E+00	1.7E+01	2.6E+00	1.3E+01
90	2.2E+00	5.0E+00	7.8E-01	3.9E+00	8.6E+00	2.0E+01	3.0E+00	1.5E+01
95	2.5E+00	5.8E+00	9.0E-01	4.4E+00	1.0E+01	2.4E+01	3.6E+00	1.8E+01
100	2.8E+00	6.8E+00	1.0E+00	5.0E+00	1.2E+01	2.9E+01	4.3E+00	2.2E+01
105	3.2E+00	7.6E+00	1.1E+00	5.6E+00	1.4E+01	3.4E+01	5.0E+00	2.6E+01
110	3.6E+00	8.6E+00	1.3E+00	6.4E+00	1.7E+01	4.0E+01	6.0E+00	3.0E+01
115	4.0E+00	9.6E+00	1.5E+00	7.2E+00	2.0E+01	4.8E+01	7.2E+00	3.6E+01
120	4.6E+00	1.1E+01	1.7E+00	8.2E+00	2.4E+01	5.8E+01	8.6E+00	4.3E+01

(2) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas in 40 C.F.R. Part 266, Appendix I, Table I-E shall be replaced with Table I-E in this subsection.

Table I-E: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas

Terrain adjusted eff. stack ht. (m)	Values for use in urban and rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	1.1E-02	2.6E-02	4.0E-03	2.0E-02
6	1.6E-02	3.9E-02	5.8E-03	2.9E-02
8	2.4E-02	5.8E-02	8.6E-03	4.3E-02
10	3.5E-02	8.2E-02	1.3E-02	6.2E-02
12	4.3E-02	1.0E-01	1.5E-02	7.6E-02
14	5.0E-02	1.3E-01	1.9E-02	9.4E-02
16	6.0E-02	1.4E-01	2.2E-02	1.1E-01
18	6.8E-02	1.6E-01	2.4E-02	1.2E-01
20	7.6E-02	1.8E-01	2.7E-02	1.3E-01
22	8.2E-02	1.9E-01	3.0E-02	1.5E-01
24	9.0E-02	2.1E-01	3.3E-02	1.6E-01
26	1.0E-01	2.4E-01	3.6E-02	1.8E-01
28	1.1E-01	2.7E-01	4.0E-02	2.0E-01
30	1.2E-01	3.0E-01	4.4E-02	2.2E-01
35	1.5E-01	3.7E-01	5.4E-02	2.7E-01
40	1.9E-01	4.6E-01	6.8E-02	3.4E-01
45	2.4E-01	5.4E-01	8.4E-02	4.2E-01
50	2.9E-01	6.8E-01	1.0E-01	5.0E-01
55	3.5E-01	8.4E-01	1.3E-01	6.4E-01
60	4.3E-01	1.0E+00	1.5E-01	7.8E-01
65	5.4E-01	1.3E+00	1.9E-01	9.6E-01
70	6.0E-01	1.4E+00	2.2E-01	1.1E+00
75	6.8E-01	1.6E+00	2.4E-01	1.2E+00
80	7.6E-01	1.8E+00	2.7E-01	1.3E+00
85	8.2E-01	2.0E+00	3.0E-01	1.5E+00
90	9.4E-01	2.3E+00	3.4E-01	1.7E+00
95	1.0E+00	2.5E+00	4.0E-01	1.9E+00
100	1.2E+00	2.8E+00	4.3E-01	2.1E+00
105	1.3E+00	3.2E+00	4.8E-01	2.4E+00
110	1.5E+00	3.5E+00	5.4E-01	2.7E+00
115	1.7E+00	4.0E+00	6.0E-01	3.0E+00
120	1.9E+00	4.4E+00	6.4E-01	3.3E+00

(3) The Risk Specific Doses (10^{-5}) in 40 C.F.R. Part 266, Appendix V shall be replaced with Appendix V in this subsection.

Appendix V: Risk specific doses (10^{-6})			
Constituent	CAS No.	Unit risk (m3/ug)	RsD (ug/m3)
Acrylamide	79-06-1	1.3E-03	7.7E-04
Acrylonitrile	107-13-1	6.8E-05	1.5E-02
Aldrin	309-00-2	4.9E-03	2.0E-04
Aniline	62-53-3	7.4E-06	1.4E-01
Arsenic	7440-38-2	4.3E-03	2.3E-04
Benz(a)anthracene	56-55-3	8.9E-04	1.1E-03
Benzene	71-43-2	8.3E-06	1.2E-01

Benzidine	92-87-5	6.7E-02	1.5E-05
Benzo(a)pyrene	50-32-8	3.3E-03	3.0E-04
Beryllium	7440-41-7	2.4E-03	4.2E-04
Bis(2-chloroethyl)ether	111-44-4	3.3E-04	3.0E-03
Bis(chloromethyl)ether	542-88-1	6.2E-02	1.6E-05
Bis(2-ethylhexyl)-phthalate	117-81-7	2.4E-07	4.2E+00
1,3-Butadiene	106-99-0	2.8E-04	3.6E-03
Cadmium	7440-43-9	1.8E-03	5.6E-04
Carbon Tetrachloride	56-23-5	1.5E-05	6.7E-02
Chlordane	57-74-9	3.7E-04	2.7E-03
Chloroform	67-66-3	2.3E-05	4.3E-02
Chloromethane	74-87-3	3.6E-06	2.8E-01
Chromium VI	7440-47-3	1.2E-02	8.3E-05
DDT	50-29-3	9.7E-05	1.0E-02
Dibenz(a,h)anthracene	53-70-3	1.4E-02	7.1E-05
1,2-Dibromo-3-chloropropane	96-12-8	6.3E-03	1.6E-04
1,2-Dibromoethane	106-93-4	2.2E-04	4.5E-03
1,1-Dichloroethane	75-34-3	2.6E-05	3.8E-02
1,2-Dichloroethane	107-06-2	2.6E-05	3.8E-02
1,1-Dichloroethylene	75-35-4	5.0E-05	2.0E-02
1,3-Dichloropropene	542-75-6	3.5E-01	2.9E-06
Dieldrin	60-57-1	4.6E-03	2.2E-04
Diethylstilbestrol	56-53-1	1.4E-01	7.1E-06
Dimethylnitrosamine	62-75-9	1.4E-02	7.1E-05
2,4-Dinitrotoluene	121-14-2	8.8E-05	1.1E-02
1,2-Diphenylhydrazine	122-66-7	2.2E-04	4.5E-03
1,4-Dioxane	123-91-1	1.4E-06	7.1E-01
Epichlorohydrin	106-89-8	1.2E-06	8.3E-01
Ethylene Oxide	75-21-8	1.0E-04	1.0E-02
Ethylene Dibromide	106-93-4	2.2E-04	4.5E-03
Formaldehyde	50-00-0	1.3E-05	7.7E-02
Heptachlor	76-44-8	1.3E-03	7.7E-04
Heptachlor Epoxide	1024-57-3	2.6E-03	3.8E-04
Hexachlorobenzene	118-74-1	4.9E-04	2.0E-03
Hexachlorobutadiene	87-68-3	2.0E-05	5.0E-02
Alpha-hexachlorocyclohexane	319-84-6	1.8E-03	5.6E-04
Beta-hexachlorocyclohexane	319-85-7	5.3E-04	1.9E-03
Gamma-hexachlorocyclohexane	58-89-9	3.8E-04	2.6E-03
Hexachlorocyclohexane, Technical	-	5.1E-04	2.0E-03
Hexachlorodibenzo-p-dioxin(1,2 Mixture)	-	1.3E+0	7.7E-07
Hexachloroethane	67-72-1	4.0E-06	2.5E+01
Hydrazine	302-01-2	2.9E-03	3.4E-04
Hydrazine Sulfate	302-01-2	2.9E-03	3.4E-04
3-Methylcholanthrene	56-49-5	2.7E-03	3.7E-04
Methyl Hydrazine	60-34-4	3.1E-04	3.2E-03
Methylene Chloride	75-09-2	4.1E-06	2.4E-01
4,4'-Methylene-bis-2-chloroaniline	101-14-4	4.7E-05	2.1E-02

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Nickel	7440-02-0	2.4E-04	4.2E-03
Nickel Refinery Dust	7440-02-0	2.4E-04	4.2E-03
Nickel Subsulfide	12035-72-2	4.8E-04	2.1E-03
2-Nitropropane	79-46-9	2.7E-02	3.7E-05
N-Nitroso-n-butylamine	924-16-3	1.6E-03	6.3E-04
N-Nitroso-n-methylurea	684-93-5	8.6E-02	1.2E-05
N-Nitrosodiethylamine	55-18-5	4.3E-02	2.3E-05
N-Nitrosopyrrolidine	930-55-2	6.1E-04	1.6E-03
Pentachloronitroben-zene	82-68-8	7.3E-05	1.4E-02
PCBs	1336-36-3	1.2E-03	8.3E-04
Pronamide	23950-58-5	4.6E-06	2.2E-01
Reserpine	50-55-5	3.0E-03	3.3E-04
2,3,7,8-Tetrachlorodi-benzo-p-dioxin	1746-01-6	4.5E+01	2.2E-08
1,1,2,2-Tetrachloro-ethane	79-34-5	5.8E-05	1.7E-02
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+00
Thiourea	62-56-6	5.5E-04	1.8E-03
1,1,2-Trichloroethane	79-00-5	1.6E-05	6.3E-02
Trichloroethylene	79-01-6	1.3E-06	7.7E-01
2,4,6-Trichlorophenol	88-06-2	5.7E-06	1.8E-01
Toxaphene	8001-35-2	3.2E-04	3.1E-03
Vinyl Chloride	75-01-4	7.1E-06	1.4E-01

[Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be \$9,000-]

Section 4. Standardized Permits. Except as established in Sections 5 through 9 of this administrative regulation, the standards for owners and operators of hazardous waste facilities operating under a standardized permit shall be as established in 40 C.F.R. 267, except 40 C.F.R. 267.150[Submittal of Fees. (1) The fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall be made payable to the Kentucky State Treasurer].

Section 5. Flood Plains. (1)(a) Except as established in paragraph (c)2. of this subsection, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the:

1. Active life of the facility;
2. Closure phase of the facility; and
3. For disposal facilities only, the post-closure phase.

(b) Prevention of washout and protection from inundation shall be accomplished by:

1. Using a structure or device designed to:

a. Provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;

b. Provide sufficient structural integrity to prevent massive failure due to the force and erosive tendencies of the 100-year floodwaters; and

c. Accommodate other characteristics of the facility's location as necessary to accomplish the requirements of this subsection;

2. Providing procedures that shall cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters; or

3. Demonstrating that alternate devices or measures, with the exception of covering the waste, shall provide protection that meets the requirements of this paragraph.

(c) The cabinet shall not issue a permit to construct a new hazardous waste:

1. Site or facility in the floodway; or

2. Disposal site or facility in the 100-year flood plain or a seasonal high-water table.

(d) A hazardous waste site or facility shall not restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year flood plain so as to pose a hazard to human life, wildlife, or land or water resources.

(e) A facility that has closed and removed all hazardous waste, waste constituents, contaminated soil, debris, or other material contaminated with hazardous constituents, shall not be required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood.

Section 6. Chemical Demilitarization. (1) In addition to the requirements in 40 C.F.R. Part 264, the cabinet shall consider the criteria established in subsection (2) of this section in making a determination to issue, deny, or condition a permit for any person applying for a permit to construct or operate a hazardous waste site or facility for treatment, storage, or disposal of any of the hazardous wastes listed in 401 KAR 39:060, Section 3(4).

(2) The permit applicant shall affirmatively demonstrate and the cabinet shall determine prior to issuance, conditional issuance, or denial of the permit that:

(a)1. The proposed treatment or destruction technology has been proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, for a period of time sufficient to provide assurance of 99.9999 percent destruction and removal efficiency of each substance proposed to be treated or destroyed as established in KRS 224.50-130(3)(a).

2. Destruction and removal efficiency (DRE) shall be determined for each waste from the following equation:

$$DRE \% = (W_{in} - W_{out}) \times 100\%$$

Where:

W_{in} = Mass feed rate of waste into the process.

W_{out} = Mass emission rate of the same waste out of the process.

(b)1. Monitoring data from a comparable facility shall reflect the absence of emissions from stack or fugitive sources, including the products of combustion and incomplete combustion, which alone or in combination present an adverse effect on human health or the environment in accordance with KRS 224.50-130(3)(b).

2. The cabinet shall determine from the monitoring data the absence of risk to human health and the environment prior to permit issuance.

(c) A plan has been developed and funded providing for sufficient training, coordination, and equipment for state and local emergency response consistent with the requirements set forth in KRS 224.50-130(c).

(d) All workers within 1000 meters of the treatment unit are provided with an adequate level of protection against exposure to the nerve agents.

(3) In addition to the performance standards established in Section 1 of this administrative regulation, a facility treating the nerve and blister agents with hazardous waste codes N001, N002, or N003 established in 401 KAR 39:060, Section 3(4) shall be designed, constructed, and maintained to achieve a 99.9999 percent destruction and removal efficiency of each substance treated or destroyed.

(4)(a) An owner or operator who stores munitions or explosive hazardous wastes that contain the substances specified in 401 KAR 39:060, Section 3(4), shall be subject to the requirements of 40 C.F.R. 264, Subpart EE.

(b) As referenced in 40 C.F.R. 266.202(a), military munitions shall not include any material containing the substances established in 401 KAR 39:060, Section 3(4).

(c) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste in 401 KAR 39:060, Section 3(4), shall be subject to the applicable regulatory requirements of 401 KAR Chapter 39, including the storage prohibitions referenced in 40 C.F.R. 268.50 as established in 401 KAR 39:060, Section 4.

Section 7. Financial Assurance. (1)(a) An owner or operator may satisfy the financial assurance requirements of this administrative regulation by submitting to the cabinet by certified mail, a bond guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(b) The bond shall be supported by a cash account or certificate of deposit.

(c) The cash account or the certificate of deposit shall be held in escrow pursuant to an escrow agreement.

(d) An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(e) A cash account or certificate of deposit shall only be held by a bank or financial institution that is subject to and complies with all applicable state and federal financial regulations.

(2) In addition to the financial assurance wording of instruments referenced in 40 C.F.R. 264.143, 40 C.F.R. 264.145, 40 C.F.R. 264.147, 40 C.F.R. 264.151, 40 C.F.R. 265.143, 40 C.F.R. 265.145, 40 C.F.R. 265.147, 40 C.F.R. 267.143, 40 C.F.R. 267.147, and 40 C.F.R. 267.151, the owner or operator shall include the following information if using cash or certificate of deposit:

(a) Date that the signatory signed the document in front of the notary public;

(b) Signature, seal, and the date that the notary public's commission expires;

(c) Dollar amount being posted in escrow in words and in United States dollars;

(d) Certificate number, date of issuance, and principal dollar amount in United States dollars, of each certificate of deposit;

(e) Cash account number, date of opening, and principal dollar amount in United States dollars of each cash account maintained;

(f) Signature of the authorized representative of the escrow agent; and

(g) Signature of the Director of the Kentucky Division of Waste Management.

(3) The cabinet shall be the beneficiary of the Escrow Agreement to demonstrate closure, post-closure, or corrective action for the cash account or certificate of deposit.

(4) The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform closure, post-closure, or corrective action in accordance with the respective plan.

(5) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current closure, post-closure, or corrective action cost estimate, except as established in this subsection.

(6) After each interest period is completed, if the current closure, post-closure, or corrective action cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the cash accounts or the certificate of deposit.

(a) If the value of the cash accounts or certificate of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, shall:

1. Deposit an amount into the cash accounts or the certificate of deposit so that its value after this deposit at least equals the amount of the current closure, post-closure, or corrective action cost estimate; or

2. Obtain other financial assurance as established in 40 C.F.R. Parts 264 or 265 to cover the difference.

(b) If the value of the cash account or the certificate of deposit is greater than the total amount of the current closure, post-closure, or corrective action cost estimate, the owner or operator may submit a written request to the cabinet for release of the amount in excess of the current closure, post-closure, or corrective action cost estimate.

(7)(a) The terms of the escrow agreement for a cash account or certificate of deposit shall provide a provision for a notice of cancellation by certified mail to the owner or operator and to the cabinet prior to cancellation.

(b) The cancellation provision shall state that cancellation shall not occur during the 120 days beginning on the date of receipt of

the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

(8) The owner or operator may cancel the cash account or certificate of deposit if the cabinet has given prior written consent. The cabinet shall provide a written consent if:

(a) An owner or operator substitutes alternate financial assurance as established in this administrative regulation; or

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with this administrative regulation.

(9)(a) An owner or operator or any other person authorized to perform closure, post-closure, or corrective action may request reimbursement for closure, post-closure, or corrective action expenditures by submitting itemized bills to the cabinet.

(b) Within sixty (60) days after receiving bills for closure, post-closure, or corrective action activities, the cabinet shall determine if the closure, post-closure, or corrective action expenditures are in accordance with the plan or approved, and if so, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as stated in writing if the cabinet determines that the expenditures are in accordance with the plan or approved.

(10) If a financial mechanism is used for multiple facilities, all matters arising in accordance with the financial mechanism related to the validity, interpretation, performance, and enforcement of the financial mechanism shall be determined in accordance with the law and practice of the Commonwealth of Kentucky.

(11) Except as provided in 401 KAR Chapter 39 and KRS 224.46, a variance or other waiver of any financial requirements shall not be granted by the cabinet.

(12) Upon request by the cabinet, the insurer shall provide to the cabinet a duplicate original of the policy including all endorsements thereon.

(13)(a) Based on evidence that the owner or operator may no longer meet the financial test for any financial assurance posted, the cabinet may require reports of financial condition from the owner or operator.

(b) If the cabinet determines, based on the reports of financial condition or other information, that the owner or operator no longer meets the financial test for any financial assurance posted, the owner or operator shall provide financial assurance using the appropriate instrument as specified in this administrative regulation within thirty (30) days after notification of the cabinet's determination.

(14) In addition to 40 C.F.R. 264.151 requiring an owner or operator to notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the cabinet and all Regional Administrators of Regions that are affected by the owner or operator's financial assurance mechanisms.

Section 8. Releases from Solid Waste Management Units. The owner or operator of a facility, any person seeking a permit, or any person closing a facility for the treatment, storage, or disposal of hazardous waste, shall institute corrective action as established in this section, necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(1) A facility assessment shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Sections 6(1) and (2).

(2) A fee for the facility assessment shall be required as established in KRS 224.46-016(3).

(3)(a) Corrective action shall be established in the permit or other enforceable document in accordance with this administrative regulation.

(b) The permit or other enforceable document shall contain:

1. A schedule of compliance for the corrective action, if corrective action will not be completed prior to issuance of the permit or closure of the facility; and

2. An assurance of financial responsibility for completing the corrective action.

(4)(a) A required facility investigation shall be conducted consistent with the requirements established in 401 KAR 100:030.

Section 6(3) through (8), Section 7(2)(a)1 and 2, and Section 7(2)(b) and (c).

(b) A fee for the facility investigation shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(a).

(5)(a) A required plan or report for corrective action shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Section 8(1) and (3) and Section 9(1) and (2).

(b) A fee for corrective action shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(b).

(6) The owner or operator shall implement corrective actions beyond the facility property boundary, if necessary to protect human health and the environment, unless the owner or operator demonstrates to the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain permission to implement corrective actions beyond the facility property boundary.

(a) The owner or operator shall not be relieved of all responsibility to clean up a release that has migrated beyond the facility property boundary if off-site access is denied.

(b) On-site measures to address releases beyond the facility property boundary shall be determined in accordance with 401 KAR Chapter 39.

(c) An assurance of financial responsibility for corrective action for releases beyond the facility property boundary shall be provided.

(7) This section shall not apply to a remediation waste management site unless it is part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

(8) The schedule for closure of each hazardous waste management unit and for final closure of the facility required to be included in the closure plan established in subsection (5) of this section, shall also comply with the requirements in KRS 224.46-520(8).

Section 9. Exceptions and Additions. (1)(a) In the event of a release or threatened release of a pollutant or contaminant to the environment the facility shall comply with the requirements of 401 KAR 39:060, Section 6(1).

(b) If the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired in accordance with KRS 224.1-400.

(c) The reference to "EPA notification procedures" referenced in 40 C.F.R. Parts 264 to 267 shall be replaced with the notification procedures established in paragraph (a) of this subsection.

(2) Any reports, notifications, information, or documents required to be submitted to EPA, shall also be submitted to the cabinet at the same time.

(3) In addition to Section 3008 of RCRA, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(4) In addition to Section 3004(o)(1) of RCRA, KRS 224.46-530(1)(h) and (i), Sections 1 and 2 of this administrative regulation shall apply.

(5) The citation to Section 3004(k) of RCRA shall be replaced with KRS 224.1-010(43).

(6) In addition to the requirements in Section 3005 of RCRA, KRS 224.46-520, KRS 224.46-530, 401 KAR 39:060, and this administrative regulation shall apply.

(7) In addition to Section 7003 of RCRA, KRS 224.10-410 shall apply.

(8) In addition to Section 3005(j)(1) of RCRA, Sections 1 and 2 of this administrative regulation shall apply.

(9) In addition to Sections 3004(o)(2) and (3), Section 1 of this administrative regulation shall apply.

(10) In addition to Sections 3005(j)(2), (3), (4), and (13), Section 2 of this administrative regulation shall apply.

(11) The requirements in Section 3010(a) of RCRA shall be replaced with the requirements established in 401 KAR 39:080, Section 1(2).

(12) In addition to Section 3019 of RCRA, KAR 39:060, and KRS 224.46-520(1) shall apply.

(13) In addition to Section 3004(d) of RCRA, KRS 224.46-

520(2) shall apply.

(14) Any decision to shorten the post-closure period or the post-closure monitoring and maintenance of a permitted facility shall be made in accordance with KRS 224.46-520(4).

(15) Waste, used oil, or material contaminated with dioxins or hazardous wastes shall not be used as a dust suppressant.

(16) In addition to the import notifications referenced in 40 C.F.R. 264.12(a) and 40 C.F.R. 265.12(a) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(17) In addition to the requirements in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, owners and operators of hazardous waste treatment, storage, and disposal facilities and owners and operators of interim status hazardous waste treatment, storage, and disposal facilities shall prepare a Hazardous Waste Annual Report for the cabinet annually as established in 401 KAR 39:080, Section 1(8)(a).

(18) The citations to Sections 301, 307, and 402 of the Clean Water Act in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(19) The citations to 40 C.F.R. Part 60 and 40 C.F.R. Part 61, shall also include 401 KAR 60:005 and 401 KAR 57:002, respectively.

(20) The citation to 40 C.F.R. 63, Subpart EEE shall also include 401 KAR 63:002, Section 2(4)(rr).

(21) The citation to 40 C.F.R. 124.15 in 40 C.F.R. 264.1030(c), 40 C.F.R. 264.1050(c), 40 C.F.R. 264.1080(c), 40 C.F.R. 265.1080(c) shall be replaced with 40 C.F.R. 124.5.

(22) The citations to 40 C.F.R. Part 144 in 40 C.F.R. Parts 264, 265, and 267 shall be replaced with 805 KAR 1:110.

(23) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 264.143(h), 40 C.F.R. 264.145(h), 40 C.F.R. 264.147(a)(1)(i), 40 C.F.R. 264.147(b)(1)(i), 40 C.F.R. 265.143(g), 40 C.F.R. 265.147(a)(1)(i), 40 C.F.R. 265.147(b)(1)(i), and 40 C.F.R. 265.145(g), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(24) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the hazardous waste permit program.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520. In addition, this administrative regulation is necessary to establish criteria for the cabinet to consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents as required by KRS 224.50-130.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 establishes criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities and establishing criteria for the cabinet to consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage or disposal of nerve agents, instead of only establishing the fee for post-closure as it was previously established to do. In addition, this administrative regulation was modified for consistency with federal maximum contaminant levels for groundwater. In particular, the limits established for Aldicarb, Nickel, Silver, Arsenic, Barium, Chromium, Endrin, Lead, and Selenium were modified. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520. In addition, this amendment is necessary to establish criteria for the cabinet to consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents as required by KRS 224.50-130.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.46-520 requires the Energy and Environment to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-

130 establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be required to take any additional actions as a result of this administrative regulation. The standards for the hazardous waste permit program established in this consolidated administrative regulation are consistent with the current hazardous waste permit program established in an already effective administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost for complying with this administrative regulation as the hazardous waste permit program is consistent with the current effective administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefit to compliance as there is no substantive change being made in this amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes review fees for solid waste management units only if there is a release. This is consistent with current regulation.

(9) TIERING: Is tiering applied? This administrative regulation applies to all entities regulated under the hazardous waste permit program. To apply tiering to the regulation would decrease costs for some entities while not for others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 264, 265, 266, and 267.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation, along with 401 KAR 39:120, will generate permitting review fees totaling approximately \$450,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$450,000 in permitting review fees + \$1.5M in federal grant funding for this program, as a whole.

Expenditures (+/-): \$2.9M for this program, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267.

2. State compliance standards. KRS 224.46-520, 224.50-130.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. This administrative regulation is more stringent than the federal counterpart in that concentration limits established in 40 C.F.R. 264.94 are replaced with the concentration limits consistent with the current Kentucky environmental performance standards. Section 5, facility location with regard to flood plains is in addition to the federal requirements. Section 6, chemical demilitarization, places additional requirements on nerve and blister agents. Section 7, financial assurance, allows an owner or operator to provide financial assurance by way of cash and certificates of deposit where the federal regulations do not. Section 8 imposes requirements in the event of a release for solid waste management units consistent with other hazardous waste permitted facilities, including the review fees. Section 9 requires release reporting and notification to the cabinet, gives enforcement authority and establishes penalization by the cabinet.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements and are consistent with current Kentucky administrative regulations. The more stringent concentration requirements established in this regulation are consistent with the current Kentucky environmental performance standards. Allowing cash and certificates of deposit as a mechanism for financial assurance gives a facility additional means to provide financial assurance.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 39:120. Permit review, determination timetables, and[Application] fees.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. Part 270

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.46-550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) authorizes[states] that the Energy and Environment [Environmental and Public Protection] Cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.[The purpose of] This administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the [chapter is to establish a] fee schedule for hazardous waste management. [This administrative regulation establishes the fee schedule for storage, treatment or disposal facility permits.]

Section 1. Applicability. (1) This administrative regulation shall apply[applies] to:

(a) An owner or operator of a hazardous waste site or facility in Kentucky that submits an application for:

1. A[All] treatment, storage, or disposal facility permit;

2. A post-closure permit;

3. A permit that contains exposure information reports for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill;

4. An emergency permit;

5. A land treatment demonstration permit; or

6. An emergency identification number;

(b) A person who:

1. Is a recycler of hazardous waste; or

2. Petitions the cabinet to include additional wastes as a universal waste;

(c) A marketer or burner of hazardous waste fuel or used oil burned for energy recovery;

(d) A large quantity handler of universal waste;

(e) A used oil processor, refiner, burner, or marketer;

(f) A hazardous waste transporter;

(g) A hazardous waste generator; and

(h) A generator who treats hazardous waste on-site[facilities required by 401 KAR Chapter 38 to submit an application for a hazardous waste site or facility permit].

(2)[The provisions of] This administrative regulation shall apply to all applications for hazardous waste site or facility permits submitted, including those applications that[on or after the effective date of this administrative regulation, and to such applications which] are not complete[, as determined by the cabinet, by the effective date of this administrative regulation].

Section 2. Filing Fees. (1) Any owner or operator who submits a Part A Permit Application, incorporated by reference in 401 KAR 39:060, for a treatment, storage, or disposal facility shall submit[with the application] a filing fee in the amount of \$1,000.

(2)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility shall submit a filing fee in the amount of \$4,000.

(b) The filing fee established in paragraph (a) of this subsection shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5.

Section 3. Review Fees. (1)~~[Permitting Fees.]~~ In addition to those fees ~~established by~~~~[identified in]~~ KRS 224.46-016, any owner or operator who submits a permit application for a treatment, storage, or disposal facility shall submit~~[with the application]~~ the following unit fees:

- (a) Containment buildings - \$7,400;
- (b) Drip pads - \$3,700;
- (c) Miscellaneous units:
 - 1. Treatment unit - \$15,800;
 - 2. Storage unit - \$3,700; and
 - 3. Disposal unit - \$12,200; and
- (d) Boilers and industrial furnaces - \$19,400.

(2)~~[Closure Fees.]~~ Any owner or operator ~~that~~~~[who]~~ submits a closure plan for a treatment, storage, or disposal facility shall submit ~~[with the application]~~ the following fees:

- (a) A closure plan fee of \$3,600;
- (b) A ~~[RCRA]~~ facility assessment fee in accordance with KRS 224.46-016; and
- (c) A review fee for each type of hazardous waste management unit being closed.

1. The fee for incinerators shall be submitted one (1) time for each different type of incinerator.

2. The fees for tanks and containers shall be submitted one (1) time for each different tank design or container type.

3. Tank design criteria ~~shall include~~~~[includes]~~ differences in materials of construction, pressure vessels, nonpressure vessels, shape, and ancillary equipment.

4. Container types shall include drums, tote bins, bottles, and roll-off boxes.

5. The fees shall be:

- a.~~[1.]~~ Incinerator - \$2,000;
- b.~~[2.]~~ Waste piles - \$1,000;
- c.~~[3.]~~ Surface impoundments - \$1,500;
- d.~~[4.]~~ Tanks - \$660;
- e.~~[5.]~~ Containers - \$460;
- f.~~[6.]~~ Land treatment - \$2,000;
- g.~~[7.]~~ Landfill - \$2,000;
- h.~~[8.]~~ Containment buildings - \$660;
- i.~~[9.]~~ Drip pads - \$660;
- j.~~[10.]~~ Miscellaneous units:
 - (i)~~[a.]~~ Treatment unit - \$2,000;
 - (ii)~~[b.]~~ Storage unit - \$660; and
 - (iii)~~[c.]~~ Disposal unit - \$1,000; and
- k.~~[11.]~~ Boilers and industrial furnaces - \$2,000.

(3)~~[Corrective action fees.]~~ Any owner or operator ~~that~~~~[who]~~ is required to submit to the cabinet a ~~[RCRA]~~ facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

- (a)~~[RCRA]~~ Facility investigation plan - the fee as established in KRS 224.46-016;
- (b) Corrective action plan - the fee as established in KRS 224.46-016;
- (c) Corrective action management unit - \$3,700; and
- (d) Temporary unit:
 - 1. Temporary containers - \$3,000; and
 - 2. Temporary tanks - \$3,700.

(4)~~[Modification fees.]~~ In addition to those fees established ~~by~~~~[specified in]~~ KRS 224.46-018, any owner ~~or~~~~[of]~~ operator ~~that~~~~[who]~~ modifies a permit shall submit ~~[with the modification]~~ the ~~[following]~~ fees established in this subsection.~~[.]~~

(a) An owner or operator ~~that~~~~[who]~~ modifies an existing hazardous waste treatment, storage, or disposal facility permit to add one (1) or more waste streams, or a waste stream with the same characteristic that is already permitted, shall submit the following fees along with the modification:

- 1. Containment buildings - \$3,400;
- 2. Drip pads - \$3,400;
- 3. Miscellaneous units:
 - a. Treatment unit - \$5,500;
 - b. Storage unit - \$3,400; and
 - c. Disposal unit - \$4,500; and

4. Boilers and industrial furnaces - \$6,500.

(b) An owner or operator ~~that~~~~[who]~~ modifies an existing hazardous waste treatment, storage, or disposal facility permit by constructing or operating an additional hazardous waste treatment, storage, or disposal unit, or by substantially modifying an existing hazardous waste treatment, storage, or disposal unit, shall submit the following fees along with the modification:

- 1. Containment buildings - \$7,400;
- 2. Drip pads - \$3,700;
- 3. Miscellaneous units:
 - a. Treatment unit - \$15,800;
 - b. Storage unit - \$3,700; and
 - c. Disposal unit - \$12,200; and
- 4. Boilers and industrial furnaces - \$19,400.

(c) 1. An owner or operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.

2. The registration modification fee established in subparagraph 1. of this paragraph shall not apply to a registrant who modifies his registration by only making a name change.

(5)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility, but has not received a permit, shall submit a review fee in the amount of \$9,000.

(b) This fee shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5 and pay the fees required by this administrative regulation.

(6) Any owner or operator that submits an application for an emergency permit shall submit a review fee in the amount of \$750.

(7) Any owner or operator that submits an application for land treatment disposal shall submit a review fee in the amount of \$5,500.

(8) In addition to any other required registration fees, any owner or operator that submits an application for an emergency identification number shall also submit a review fee in the amount of \$100.

(9) A person petitioning to change the classification of a hazardous waste or a category of hazardous waste to a universal waste shall submit a review fee in the amount of \$2,500.

(10) A person who submits a permit application containing an exposure information report for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill shall submit a review fee in the amount of \$5,000.

Section 4. Registration and Fees. (1) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an annual registration fee in the amount of \$300 shall be submitted:

- (a) Per process for a hazardous waste generator who treats hazardous waste on site;
- (b) Per process for a recycler of hazardous waste;
- (c) By a marketer or burner of hazardous waste fuel burned for energy;
- (d) By a used oil processor, refiner, burner, or marketer;
- (e) By a Kentucky based hazardous waste transporter; and
- (f) By a very small quantity generator

(2) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an initial registration fee in the amount of \$300 shall be submitted for:

- (a) Nonhazardous used oil activities;
- (b) A large quantity handler of universal waste; and
- (c) A non-Kentucky based hazardous waste transporter.

Section 5. Submittal of Fees. (1) The fees required in Sections 2 through 4 of this administrative regulation shall be submitted to the cabinet with the application, registration, petition, or other required documentation related to the request.

(2) Fees shall not be refunded if an application, registration, petition, or other request is withdrawn.

(3)~~[(2)]~~ All checks or money orders shall be made payable to the Kentucky State Treasurer and note that the fee is for

hazardous waste branch.

(4) The cabinet shall refund any fees paid in accordance with Section 1(1)(g) of this administrative regulation, if the cabinet fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste on-site.

Section 6. Permit Review and Determination Timetables. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all applicable requirements of KRS Chapter 224 and 401 KAR Chapter 39.

(3)(a) If a Part A Permit Application, incorporated by reference in 401 KAR 39:060, is required by KRS Chapter 224 and 401 KAR Chapter 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in paragraph (b) of this subsection.

(b) The cabinet shall review all hazardous waste permit applications and make a determination to issue or deny a permit within the following timetables:

1. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for storage in containers or tanks only within 180 calendar days;

2. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for treatment and storage in containers or tanks within 365 calendar days;

3. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste incinerators within 365 calendar days;

4. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for facilities with land-based units, including surface impoundments, waste piles, land treatment units, and landfills, and other miscellaneous units within 365 calendar days;

5. Class 3 modifications to a hazardous waste permit within 365 calendar days;

6. Class 1 and Class 2 modifications to a hazardous waste permit requiring approval within ninety (90) calendar days;

7. Closure plan with groundwater monitoring within 365 calendar days;

8. Closure plan without groundwater monitoring within 180 calendar days; and

9. Renewal of permits shall follow the same timetables as established in subparagraphs 1. through 4. of this paragraph for the applicable type of unit.

(c) The timetables established in paragraphs (a) and (b) of this subsection may be extended to a mutually agreed upon timetable, at the initiative of either the cabinet or the applicant.

1. The purpose and period of the extension shall be in writing and, if agreed to, shall be signed by both the cabinet and the applicant.

2. The agreement to extend the timetable shall become part of the cabinet's administrative record.

(d) If a hazardous waste permit application requires more than one (1) type of permit action as established in paragraph (b) of this subsection, the review time for each permit action shall apply and run consecutively when computing the total review time for the issuance or denial of the permit.

(4) The time periods established in subsection (3) of this section shall not run during the following intervals:

(a) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies;

(b) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(c) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives U.S. EPA's comments;

(d) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are

final and all parties are in compliance with all final orders resulting from those hearings; and

(e) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

(5) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or the applicant.

(a) If the permits are coordinated, the cabinet shall notify the applicant and indicate the time frames for which the intermediate actions and final permit actions shall be accomplished.

(b) The established time frame for final action shall not exceed the last date for action required by KRS Chapter 224 and 401 KAR Chapter 39, based on all applications being considered and their filing dates.

(6)(a)1. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency.

2. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant.

(b) Failure to respond to a notice of deficiency within the specified time shall be grounds for denial of the permit.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20) and KRS 224.10-220.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(20) states that the Energy and Environment Cabinet may provide, by administrative regulation, for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing a fee schedule and timetables for the review and determination of hazardous waste permit applications instead of only establishing the fee schedule as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(20) states that the Energy and Environment Cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be required to take any additional actions as a result of this administrative regulation. The schedule of fees and timetables established in this consolidated administrative regulation are consistent with the current schedule of fees and timetables established in an already effective administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to comply with the administrative regulation will increase for transporters of hazardous waste due to their inclusion to the \$300 annual registration fee for Kentucky based entities and a \$300 initial registration fee for non-Kentucky based entities. The cost to comply will also increase by \$300 per year for very small quantity generators as they will no longer be exempt from registration fees. There are no other increases in cost for complying with this administrative regulation as the remainder of the schedule of fees is consistent with the current effective administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefit to compliance as there is no substantive change being made in this amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment imposes new registration fees for hazardous waste transporters and very small quantity generators. These new fees will provide the agency with necessary receipts to cover the costs of administering this program, as a whole.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes hazardous waste fees for registration, filing, review, closure, and assessment. It also imposes new registration fees for hazardous waste transporters and very small quantity generators.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would decrease costs for some entities while not for others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is not required by federal statute or federal regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate approximately \$1,356,000 in hazardous waste fees the first year for the Division of Waste Management. In addition, the division receives \$1.5M in federal grant funding to administer the program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate approximately \$1,356,000 in hazardous waste fees in subsequent years for the Division of Waste Management. In addition, the division receives \$1.5M in federal grant funding to administer the program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$1,356,000 + \$1.5M in federal grant funding for this program, as a whole.

Expenditures (+/-): \$2.9M for this program, as a whole.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 45:060. Special waste permit-by-rule.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain, or permit the use of a waste site or facility to obtain a permit. This administrative regulation establishes~~sets forth~~ the requirements for a special waste permit-by-rule.

Section 1. Permit-by-rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, if the operation is a practice common to the industry, if the site or facility is not in violation of 401 KAR 30:031, and if the operation does not present a threat or potential threat to human health or the environment:

(1) ~~Pits~~~~[Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the pit is]~~ subject to 401 KAR 5:090;

(2) Temporary storage of special waste in piles;

(3) Injection wells;

(a) Used~~used~~ for disposal of special waste subject to 805 KAR 1:110~~[401 KAR 5:090]~~ or

(b) In~~in~~ compliance with an underground injection control permit issued by the U.S. EPA;

(4) Special waste surface impoundments with a KPDES permit;

(5) Surface impoundments;

(a) ~~That~~~~that~~ treat domestic sewage and that do not contain any industrial wastewater;

(b) ~~or~~ are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit; and

(6) Beneficial reuse of coal combustion by-products for placement at active or abandoned underground or surface coal mines, including structural fill, backfill, material for contouring, mine stabilization, and reclamation material, if:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with sound engineering practices ~~shall be~~~~are~~ undertaken;

(c) Unless permission has been obtained from the appropriate regulatory agency, the use is not within 100 feet of existing streams or 300 feet of existing drinking water wells, floodplains, or wetlands;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the type and amount of coal combustion by-products released for reuse; the name and address of each recipient of coal combustion by-products; and the specific use, if known, of each recipient made of the coal combustion by-products.

Section 2. Noncompliances. (1) A special waste permit-by-rule site or facility that is not operating in compliance with Section 1 of this administrative regulation shall be subject to appropriate enforcement action, including corrective action or revocation.

(2) The cabinet may require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule if doing so will ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017, at 6:00 p.m. in Training Room B of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for a special waste permit-by-rule.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the requirements for special waste sites or facilities to obtain a permit compliant with KRS 224.40-305. During the 2016 Regular Legislative Session, the General Assembly passed HB 563 directing the Energy and Environment Cabinet and the Cabinet for Health and Family Services to revise existing regulations to ensure the proper management of oil and gas-related wastes containing naturally occurring radioactive material (NORM).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.40-305 requires that no person shall establish, construct, operate, maintain, or permit the use of a waste site or facility without first having obtained a permit from the cabinet. This administrative regulation establishes the requirements for special waste sites or facilities in order to have a permit under the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the requirements for special waste sites and facilities to be properly permitted under the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the language and clarifies that all pits subject to 401 KAR 5:090 are deemed to have a special waste permit-by-rule. The amended administrative regulation also now references 805 KAR 1:110 rather than 401 KAR 5:090, to which injection wells are subject to for the disposal of special waste.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures that other administrative regulations, which separately regulate special waste sites and facilities, are cited appropriately.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment ensure that the administrative regulation continues to conform to KRS 224.40:305 as it establishes the requirements for special waste sites or facilities to obtain a permit as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the permit requirements for special waste sites and facilities related to the oil

and gas industries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky. This administrative regulation will also affect all special waste sites and facilities relating to waste generated by the oil and gas industries.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Entities in question (3) should not be substantially impacted by the amendment of this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities in question (3) should not be substantially impacted by the amendment of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional costs to the entities identified in question (3) as a result of the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will continue to possess a special waste permit-by-rule as long as they stay in compliance with this amended administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost associated with the implementation of the amendment to this administrative regulation.

(b) On a continuing basis: There will be no cost associated with the implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding associated with the implementation of the amendment to this administrative regulation.

(8) State whether or not the administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; this administrative regulation establishes requirements for special waste sites and facilities to hold a permit-by-rule under KRS 224.40-305.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky by establishing requirements for special waste sites and facilities to hold a permit-by-rule required under KRS 224.40:305.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. KRS 224.10-100, 224.40-305, 224.50-760, and 40 C.F.R. Part 258.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or for local governments for the first year revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or for local governments for the first year revenue.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$2.9 million to operate the entire solid and special waste programs in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$2.9 million to operate the entire solid and special waste programs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this administrative regulation will not have a fiscal impact on state or local government agencies.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

RELATES TO: KRS 224.1[224.01], 224.10, 224.40, 224.43, 224.50, 224.99, 40 C.F.R. Part 258

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to promulgate administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes technical requirements applicable to the management of solid waste. This administrative regulation defines terms used in the administrative regulations of this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 48 shall have the meanings given in this section. (1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2)[~~"100-year flood"~~] means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3)[~~"Above ground"~~][~~Aboveground~~] tank" means a device meeting the definition of "tank" and that is situated in the[~~such a~~] way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(3)[~~(4)~~] "~~Active fault~~" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(5)[~~(6)~~] "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(4) "~~Acute hazardous waste~~" is defined by 401 KAR 39:005.

(5)[~~(6)~~] "~~Active portion~~" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(7) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) [(14)] "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(7) [(12)] "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(8) [(13)] "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(14) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, including [such as] the plant manager, superintendent, or person of equivalent responsibility.

(9) [(15)] "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(16) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(17) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(10) [(18)] "Cabinet" is defined by KRS 224.1-010(8) [shall have the meaning specified in KRS 224.01-010].

(11) [(19)] "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(12) [(20)] "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(13) [(24)] "Certification" means a statement of professional opinion based upon knowledge and belief.

(14) [(22)] "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(23) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material.

(24) "Closure" is defined by KRS 224.1-010(4).

(15) "Closure care" means the routine care, maintenance, monitoring, and any required corrective action of a solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(16) [(25)] "Closure" shall have the meaning specified in KRS

224.01-010.

(26) "Coal mining solid waste" means solid waste, as defined by KRS 224.01-010, that is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(27) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(28) "Collection box" shall have the meaning specified in KRS 224.01-010.

(29) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(30) "Component" means either the tank or ancillary equipment of a tank system.

(31) "Compost" shall have the meaning specified in KRS 224.01-010.

(32) "Composting" shall have the meaning specified in KRS 224.01-010.

(33) "Conditionally exempt small quantity generator" means "very small quantity generator" as defined by 40 C.F.R. 260.10.

(17) [:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(34) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(35) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of construction/demolition waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(18) [(36)] "Construction/demolition waste" means waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup.

(19) [(37)] "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be

classified as other than construction materials.

(38)] "Contained landfill" means a solid waste site or facility that accepts solid waste for disposal that is located, designed, constructed, operated, maintained, and closed in accordance with. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(20)](39)] "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level established[specified] in 401 KAR 30:031, [Sections 5 and 6 of] 401 KAR 47:030, Sections 5 and 6, or [Section 8 of] 401 KAR 39:090, Section 8[34:060];

(b) An increase in the concentration of that substance in the groundwater if[where] the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or[Section 8 of] 401 KAR 39:090, Section 8[34:060]; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(21)](40)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(22)](41)] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment that[which] has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of the[such] action is a part of contingency plan development.

(23)](42)] "Convenience center" ~~shall have the meaning specified in KRS 224.01-010.~~

(43)] "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(24)](44)] "Demonstration" is defined by KRS 224.1-010(7)[shall have the meaning specified in KRS 224.01-010].

(25)](45)] "Destruction or adverse modification" ~~means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.~~

(46)] "Dike" ~~means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.~~

(47)] "Disease vector" means all insects, birds, or gnawing animals, including[such as] rats, mice, or ground squirrels, which are capable of transmitting pathogens.

(26)](48)] "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(27)](49)] "Disposal" ~~shall have the meaning specified in KRS 224.01-010.~~

(50)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(51)] "Draft permit" ~~shall have the same meaning as "proposed permit".~~

(52)] "Effluent limitations" ~~shall have the same meaning as KRS 224.01-010.~~

(53)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(54)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(55)] "Engineer" shall have the meaning specified in KRS 322.010.

(28)](An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(56)] "Ephemeral stream" means a stream that[which] flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that[which] has a channel bottom that is always above the local water table.

(29)](57)] "Equivalent method" ~~means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.~~

(58)] "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990 and has not received the final layers of cover material.

(59)] "Explosive gas" means methane (CH₄).

(30)](60)] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(64)] "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility consists[may consist] of several treatment, storage, or disposal operational units, including[such as] one (1) or more landfills, surface impoundments, or combination of them.

(31)] "Facility structures" means any buildings, and sheds, or utility or drainage lines on the solid waste site or facility.

(32)](62)] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(63)] "Final closure" of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(33)](64)] "Flood plain" means areas adjoining inland waters that[which] are inundated by the base flood, unless otherwise established[specified] in 401 KAR 30:031 or 401 KAR 47:030, and includes[:] 100-year floodplain and floodway.

(34)](65)] "Floodway" ~~means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.~~

(66)] "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(35)](67)] "Free liquids" means liquids that[which] readily separate from the solid portion of a waste under ambient temperature and pressure.

(36)](68)] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(37)](69)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(38)](70)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(39)] "Hazardous waste" is defined by 401 KAR 39:005.

(40)](71)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the Pleistocene to the present.

(41)](72)] "Household solid waste" ~~shall have the meaning specified in KRS 224.01-010.~~

(73)] "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(74)] "Hydrophytic vegetation" means a plant growing either in

water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(75) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(76) "Industrial solid waste" is defined by KRS 224.1-010(30)(a)(3) shall have the meaning specified in KRS 224.01-010.

(42)(77) "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

(78) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(79) "In-ground [Inground] tank" means a device meeting the definition of "tank" in this section and ~~if [that whereby]~~ a portion of the tank is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(43)(80) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(44)(81) "Karst terrain" means a type of topography ~~if [where]~~ limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(45)(82) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(83) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and ~~can [may]~~ improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(46)(84) "Landfill" means a solid waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapters [Chapter] 47 and 48, and 401 KAR 30:031, ~~and receives a case-by-case design review by the cabinet.~~

(47)(85) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing solid waste landfill unit.

(48)(86) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste.

(49)(87) "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, ~~that might include [including but not limited to]~~ a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility ~~that [which]~~ restricts the movement of the wastes, waste constituents, or leachate.

(50)(88) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases ~~that [which]~~ will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(51) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(52)(89) "Major modification" means for solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(90) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(91) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(92) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(93) "Miscellaneous unit" means a solid waste management unit where waste is disposed and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, or unit eligible for a research, development, and demonstration permit under section 3 of 401 KAR 47:150.

(94) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(53) "Nonputrescible" means not susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances including odors, gases, or other offensive conditions.

(54) [(95) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(96) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(97) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(98) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(99) "Newsprint" shall have the meaning specified in KRS 224.01-010.

(400) "Notice of intent" means the standard forms for applying for a solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170, and 401 KAR 48:200.

(55)(401) "Off-site" means properties noncontiguous to the site.

(56)(402) "On-site" means on the same or geographically contiguous property ~~that can [which may]~~ be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way ~~that the person [which he]~~ controls and to which the public does not have access is also considered on-site property.

(57)(403) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(58)(404) "Open dump" is defined by KRS 224.1-010(37) shall have the meaning specified in KRS 224.01-010.

(59)(405) "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external bottom of the tank cannot be visually inspected.

(406) "Operational plan" means the approved plan of operations filed with the cabinet ~~that [which]~~ describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(60)(407) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(61)(408) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(62)(409) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

~~(63)~~[(110)] "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(111) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

(112) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. ~~The~~However, the term permit does not include draft permit or proposed permit.

~~(64)~~[(113)] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

~~(65)~~[(114)] "Person" is defined by KRS 224.1-010(16)[shall have the meaning specified in KRS 224.01-010].

~~(66)~~[(115)] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act can[may] result in noncompliance with the requirements of the waste management administrative regulations.

~~(67)~~[(116)] "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(117) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet pursuant to KRS 224.10-100.

~~(68)~~[(118)] "Point source" means any discernible, confined, and discrete conveyance that might include[including but not limited to] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or can[may] be discharged. This term does not include return flows from irrigated agriculture.

~~(69)~~[(119)] "Pollutant" is defined by KRS 224.1-010(34)[shall have the same meaning as KRS 224.01-010].

~~(70)~~[(120)] "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 C.F.R. 761.3[C.F.R. 761.2 as of July 1989].

~~(71)~~[(121)] "Postclosure" shall have the same meaning as "closure care."

~~(72)~~[(122)] "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(123) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

~~(124)~~ "Postconsumer waste paper" shall have the meaning specified in KRS 224.01-010.

(125) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(126) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

~~(127)~~ "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010(18)[shall have the meaning specified in KRS 224.01-010].

~~(73)~~[(128)] "Publisher" shall have the meaning specified in KRS 224.01-010.

(129) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

~~(130)~~ "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

~~(131)~~ "Recharge zone" means an area supplying the water which enters an underground drinking water source.

~~(132)~~ "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

~~(133)~~ "Recovered material" is defined by KRS 224.1-010(18)[shall have the meaning specified in KRS 224.01-010].

~~(74)~~[(134)] "Recycled content" shall have the meaning specified in KRS 224.01-010.

~~(135)~~ "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

~~(136)~~ "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

~~(137)~~ "Recycling" shall have the meaning specified in KRS 224.01-010.

~~(138)~~ "Refuse-derived fuel" shall have the meaning specified in KRS 224.01-010.

~~(139)~~ "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

~~(140)~~ "Representative samples[sample]" means a sample of a universe or whole, including a[for example,] waste pile, lagoon, or groundwater, which can be expected to exhibit the average properties of the universe or whole.

~~(75)~~[(141)] "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

~~(142)~~ "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.]

~~(143)~~ "Residual landfill" means a facility for the disposal of specific solid waste or wastes[waste(s)], including special waste, which is located, designed, constructed, operated, maintained, and closed in compliance[conformance] with 401 KAR 30:031 and 401 KAR 47:030 and that[which] receives a case-by-case design review by the cabinet.

~~(76)~~[(144)] "Resource recovery" means the recovery of material or energy from waste.

~~(145)~~ "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

~~(77)~~[(146)] "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

~~(78)~~[(147)] "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

~~(148)~~ "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

~~(149)~~ "Saturated zone" shall have the same meaning as "zone of saturation".

~~(150)~~ "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

~~(79)~~[(151)] "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

~~(152)~~ "Secretary" shall have the meaning specified in KRS 224.01-010.

~~(153)~~ "Sewage system" shall have the meaning specified in

KRS 224.01-010.

(154)] "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

~~(80)](155) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.~~

(156)] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

~~(81)](157) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.~~

(158)] "Solid waste" is defined by KRS 224.1-010(30)(a)]shall have the same meaning as KRS 224.01-010].

~~(82)](159) "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.~~

~~(160) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.~~

~~(161)] "Solid waste management" is defined by KRS 224.1-010(38)]shall have the meaning specified in KRS 224.01-010].~~

~~(83)](162) "Solid waste site or facility" means any place at which solid waste is managed, processed, or disposed by landfilling, incineration, landfarming, or any other method. The term includes: construction/demolition debris landfill; collection box; contained landfill; convenience center; disposal facility; incinerator; injection well; landfarming facility; management facility; miscellaneous unit; municipal solid waste disposal facility; pile or waste pile; processing facility; recycling center; recycling facility; residual landfill; sanitary landfill; surface impoundment; tank; transfer facility; unit or solid waste unit; wastewater treatment unit; inert landfill; or residential landfill.~~

~~(84)](163) "Solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.~~

~~(85)](164) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam but does not include any foreign country.~~

~~(86)](165) "Storage" is defined by KRS 224.1-010(27)]shall have the meaning specified in KRS 224.01-010].~~

~~(87)](166) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.~~

(167)] "Tank" means a stationary device designed to contain an accumulation of leachate or solid waste that is constructed primarily of nonearthen materials, including[(for example,] wood, concrete, steel, or plastic,)] which provide structural support.

~~(88)](168) "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.~~

~~(89)](169) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.~~

~~(170) "Termination" shall have the meaning specified in KRS 224.01-010.~~

~~(171) "Transfer facility" shall have the meaning specified in KRS 224.01-010.~~

~~(172) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.] "TENORM" is defined by KRS 211.862(13), except as established in KRS 211.863(5).~~

~~(90)](173)] "Transportation" is defined by KRS 224.1-010(28) [shall have the meaning specified in KRS 224.01-010].~~

~~(91)](174) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.~~

~~(175) "Underground drinking water source" means:~~

~~(a) An aquifer supplying drinking water for human consumption; or~~

~~(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.~~

~~(176) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.~~

~~(177) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.~~

~~(178) "Unit" shall have the same meaning as "Solid Waste Unit".~~

~~(179) "Universal collection" shall have the meaning specified in KRS 224.01-010.~~

~~(180) "Unsaturated zone" shall have the same meaning as "Zone of aeration".~~

~~(181)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.~~

~~(92)](182) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.~~

~~(93)](183) "Washout" means the carrying away of waste by waters as a result of flooding.~~

~~(94) "Waste" is defined by KRS 224.1-010(30).~~

~~(95)](184) "Waste boundary" means:~~

~~(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or~~

~~(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:~~

~~1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;~~

~~2. The volume and physical and chemical characteristics of the leachate;~~

~~3. The quantity, quality, and direction of flow of groundwater underlying the facility;~~

~~4. The proximity and withdrawal rates of groundwater users;~~

~~5. The availability of alternative drinking water supplies;~~

~~6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and~~

~~7. Public health, safety, and welfare effects.~~

~~(185)] "Waste disposal facility" shall have the same meaning as KRS 224.40-310.~~

~~(96)](186) "Waste management district" shall have the meaning specified in KRS 224.01-010.~~

~~(187) "Waste pile" shall have the same meaning as "pile".~~

~~(188) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.~~

~~(189) "Waste" shall have the meaning specified in KRS 224.01-010.~~

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(190) "Wastewater treatment plant [unit]" is defined by 401 KAR 5:002[means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste].

(97)[(191) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(192) "Water" or "waters of the Commonwealth" is defined by KRS 224.1-010(32)[shall have the meaning specified in KRS 224.01-010].

(98)[(193) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(99) Wetland[(194) "Wetlands"] means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. [(195) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(196) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

(197) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 48 shall have the meaning as identified in Table 1 of this administrative regulation.}]

[Table 1. Acronyms and Abbreviations	
ASTM	American Society for Testing Materials
C.F.R.	Code of Federal Regulations
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DEP	Kentucky Department for Environmental Protection
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
Kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
l	Liter
MCL	Maximum Contaminant Level
Mg	milligram
NPDES	National Pollutant and Discharge Elimination System
OSHA	U.S. Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
SCS	Soil Conservation Service
U.S. EPA	United States Environmental Protection Agency
USDA	United States Department of Agriculture]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017, at 6:00 p.m. in Training Room B of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of, Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 48 to administer standards for solid waste facilities and landfills.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish essential terms to administer standards for solid waste facilities and landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines terms for 401 KAR Chapter 48 for standards for solid waste facilities and landfills.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the procedures for the preparation, submittal, processing and amending of area solid waste management plan updates. This administrative regulation also provides the annual report requirements to solid waste management areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment is a clarifying amendment that more specifically defines TENORM as used by the cabinet and eliminates definitions that are unnecessary.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure that the terms used in 401 KAR Chapter 48 are adequately defined in a clear manner and include all provisions needed for consistency.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines essential terms in 401 KAR Chapter 48 regarding standards for solid waste facilities and landfills.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will decrease possible conflict and delay by clarifying definitions to more specifically define TENORM as used by the cabinet and eliminate definitions that are unnecessary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is a clarifying amendment that defines essential terms and removes unnecessary terms. As a definitions administrative regulation, no requirements or actions are included in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As a definitions administrative regulation, no

requirements or actions are included in this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included in this amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost associated with the implementation of the amendment to this administrative regulation as this is a definitions administrative regulation.

(b) On a continuing basis: There will be no cost associated with the implementation of the amendment to this administrative regulation as this is a definitions administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source as it only provides definitions of terms.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding associated with the implementation of the amendment to this administrative regulation.

(8) State whether or not the administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; this administrative regulation defines terms that are applicable to 401 KAR Chapter 48.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky by defining TENORM.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832, and 40 C.F.R. Part 258.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or for local governments for the first year revenue as it only provides definitions of terms.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or for local governments in subsequent year's revenue as it only provides definitions of terms.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no

fiscal impact as it only provides definitions of terms.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 48:090. Operating requirements for contained landfills.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.43, 224.99, 40 C.F.R. Part 761

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation establishes[sets forth] the requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and 401 KAR Chapters 30 through 49[the administrative regulations promulgated pursuant thereto], the conditions of the solid waste permit issued by the cabinet, and the approved application filed with the cabinet.

Section 2. Procedures for Excluding the Receipt of Prohibited[Hazardous] Waste. (1) The owner or operator of a solid waste contained landfill shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as established[defined] in 401 KAR Chapter 39,[34-and] polychlorinated biphenyls (PCB) wastes as established[defined] in 40 C.F.R. Part 761, and TENORM waste generated from oil and gas development activities containing combined Radium 226 and Radium 228 at concentrations exceeding limits established by 902 KAR 100:180, Section 6(1), except as authorized by 902 KAR 100:180, Section 6(2). This program shall include, at a minimum:

- (a) Random inspections of incoming loads;
- (b) Inspection of suspicious loads;
- (c) Records of any inspections;
- (d) Training of facility personnel to recognize regulated hazardous waste; and
- (e) Procedures for notifying the proper authorities if a prohibited[regulated hazardous] waste is disposed or discovered at the facility; and
- (f) Employee safety, health, training, and equipment to be used in inspection.

(2) The owner or operator shall implement [the following] additional inspection standards to meet the requirements of subsection (1) of this section.[:]

(a) The owner or operator shall have a program, approved by the cabinet pursuant to KRS 224.10-100, to inspect all waste entering a contained landfill. The program to exclude hazardous wastes shall include:

- 1. Random inspections in time, but uniformly distributed to all waste sources based on volume; and
- 2. Identification data concerning the hauler on the operating inspection record including name of the driver, name of the hauler, address, source, volume, and waste characteristics. The owner or operator shall maintain a record of the inspections in accordance with the approved recordkeeping requirements.

(b) Upon discovery of hazardous waste, the owner or operator of a contained landfill shall isolate the load and notify the cabinet immediately.

Section 3. Waste Disposal from Oil and Gas Development and Production. (1) TENORM that meets the criteria established in 902 KAR 100:180, Section 6(1)(a) shall be disposed:

- (a) In a contained landfill permitted in accordance with 401

KAR Chapters 47 and 48, or

(b) As established in subsection (2) of this section as authorized by 902 KAR 100:180, Section 6(1)(c).

(2) TENORM that meets the criteria established in 902 KAR 100:180, Section 6(2)(a) shall be disposed in a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48 that meets:

(a) The operating requirements established in 902 KAR 100:180; and

(b) Final cap design requirements established in 401 KAR 48:080, Section 8, which shall include both a synthetic liner established in 401 KAR 48:080, Section 9(5) and a low permeability soil layer meeting the design standards in 401 KAR 48:080, Section 8(4) or Section 11.

Section 4[3]. Cover Material and Disease Vector Control Requirements. (1)(a)[Daily cover:]

1. The owner or operator shall place a minimum of six (6) inches of cover over all exposed solid waste at the end of each working day or, for continuously operating landfills, once every twenty-four (24) hours. The purpose of this cover shall be to control disease, fires, blowing litter, and disease vectors.

2. The owner or operator shall only use soil or properly weathered or crushed shales, siltstones or other materials as approved by the cabinet pursuant to KRS 224.10-100.

3. Soils and other weathered, earthen[earthened] material [that have been] contaminated with petroleum may be used as daily cover if:

a. The[the] maximum benzene concentration of the material is less than or equal to one (1.0) ppm; and

b. The[if the] material is not placed as daily cover during a precipitation event.[:]

(b) The daily cover for material subject to 902 KAR 100:180 shall be an additional six (6) inches of cover for a total minimum of twelve (12) inches of cover over all exposed waste containing TENORM at the end of each working day or for continuously operating landfills, once every twenty-four (24) hours.

(c) The daily cover shall not have any protruding waste, except for the occasional litter embedded into the surface, which shall not exceed ten (10) percent of the cover area.[:]

(d)[(e)] Daily cover shall be compacted upon application and provide positive drainage. The owner or operator shall place daily cover to allow for proper drainage and shall immediately compact and grade the soil.[:]

(e)[(d)] The owner or operator may remove daily cover to facilitate the vertical passage of methane gas and leachate and shall recover the exposed areas within eight (8) hours of exposure. Daily cover required by subsection (b) of this section shall not be removed.[: and]

(f)[(e)] The owner or operator shall dispose of any daily cover removed as established in paragraph[under subsection (4)](d) of this subsection[section] as solid waste.

(2) Interim cover period. The owner or operator [shall]:

(a)1. Shall place[Place] an additional six (6) inches of interim cover over any area that will[shall] not receive additional solid waste within thirty (30) calendar days of the last waste placement.

2. With the daily cover applied in accordance with subsection (1) of this[the] section, the additional interim cover shall increase the total cover depth to twelve (12) inches;

(b) May, on[On] the day waste is to be placed over an area that is covered with daily and interim cover, [an owner or operator may] remove a maximum depth of six (6) inches of interim cover over the area of the cell for that day's operation;

(c) Shall place[Place], compact, and grade the interim cover to effect proper drainage; and

(d) Shall apply[Apply] temporary erosion controls at the time of placing interim cover.

(3) Long term cover. The owner or operator:

(a) Shall apply an additional eighteen (18) inches of long-term cover over all areas that shall not receive additional waste within four (4) months by September 15 of each year. With the daily and interim cover, the total thickness of the cover in these areas shall be thirty (30) inches;

(b) May remove a maximum of eighteen (18) inches of the thirty (30) inches of cover in this subsection within the seven (7) calendar days prior to additional waste placement. The owner or operator may remove remaining soil leaving no less than six (6) inches of daily cover from the daily cell area on the day additional waste is to be placed;

(c) Shall place, compact, and grade the long term cover to effect proper drainage; and

(d) Shall complete erosion controls and [proper] seeding of interim and long-term cover during the fall seeding season.

(4) Final cover.

(a) The owner shall initiate the application of final cover:

1.[(a)] Within thirty (30) days of filling a completed phase of the landfill to final design grade; and

2.[(b)] Annually so[such] that the final cap is in place by September 15 in all areas of the landfill that have reached final grade by August 15 of each year.

(b)[(e)] An alternate schedule may be approved by the cabinet if[when] construction techniques shall preclude construction by the [above-referenced] dates established in paragraph (a) of this subsection.

(5) Cover report. The owner or operator shall record, on a form approved by the cabinet pursuant to KRS 224.10-100, the daily cell locations, specific location of TENORM waste placement within the cell, and dates of cover applications at the landfill including:

(a) Daily[daily] usage area.[:]

(b) Daily[daily], interim, long term, and final cap installation dates; and

(c) Certification[certification] reports.

Section 5[4]. Explosive Gases Control. (1) The owner or operator of a contained solid waste landfill shall ensure that the concentration of methane gas:

(a) Generated[The concentration of methane gas generated] by the facility does not exceed twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(b) Does[The concentration of methane gas does] not exceed the lower explosive limit for methane at the facility property boundary.

(2) The owner or operator of a contained landfill shall quarterly monitor for explosive gas[at the following locations]:

(a) Underneath or in the low area of each on-site building;

(b) At locations along the boundary as shown in the permit;

(c) At each gas passive vent installed under the final closure cap;

(d) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and

(e) At any other points required by the permit.

(3) The owner or operator shall record the date, time, location, percent lower explosive limit, and other pertinent information on the recordkeeping form approved by the cabinet pursuant to KRS 224.10-100.

(4) The owner or operator shall install, operate, and maintain a gas detector with an alarm set at twenty-five (25) percent of the lower explosive limit in each on-site building.

(5) If methane gas levels exceeding the limits [specified] in subsection (1) of this section are detected, the owner or operator shall:

(a) Take all necessary steps to ensure immediate protection of human health;

(b) Immediately notify the cabinet of the methane gas levels detected and the immediate steps taken to protect human health; and

(c) Within fourteen (14) days, submit to the cabinet for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the cabinet pursuant to KRS 224.10-100.

Section 6[5]. Air Criteria. (1) Except as established in paragraph (b) of this subsection, the[The] owner or operators of contained landfills shall not allow[permit] or engage in open

burning of waste. Any open burning shall be immediately extinguished.

(a) Wastes that are burning or smoldering shall not be deposited in the fill. ~~The~~Such materials shall be deposited in a hot load area designated in the permit.

(b) The cabinet may grant emergency permission to burn in accordance with 401 KAR 47:150. The owner or operator shall follow the plan approved for ~~these~~such purposes.

(2) The owner or operator shall ~~properly~~ control dust on haul roads and other areas to prevent a nuisance to surrounding areas.

Section 7[6]. Access Requirements. (1) The owner or operator of a contained solid waste landfill shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment.

(a) The owner or operator shall use artificial barriers, natural barriers, or both, as appropriate.

(b) Each access point shall be controlled by lockable entrance ways.

(2) The owner or operator shall construct and maintain:

(a)~~Lockable entrance ways at all access points;~~

~~(b)~~ The major access road from a publicly maintained highway to the landfill;

(b)~~(c)~~ The perimeter road; and

(c)~~(d)~~ An all-weather road to within 200 feet of the working face.

(3)(a) The owner or operator of a contained landfill shall remove debris, mud, and waste from vehicles before leaving the site.

(b) The owner or operator shall be responsible for removing landfill debris, mud, and waste from off-site roadways.

Section 8[7]. Water Controls. The owner or operator of a contained solid waste landfill shall:

(1) Maintain the site as necessary to prevent erosion or washing of the fill, and grade as necessary to drain rainwater from the fill area and to prevent standing water~~[-]~~;

(2) Maintain all run-on and run-off control systems as necessary to maintain original design capacity as required by ~~[Section 2 of]~~ 401 KAR 48:070, Section 2. This can include~~[includes, but shall not be limited to]~~;

(a) Removal of sediment from run-off control structures. The site design shall specify the method to be used to determine the removal in the event that~~when~~ clean-out shall occur;

(b) Removal of debris, wastes, and soil from diversion and run-off ditches to maintain the design capacity; and

(c) Construction and maintenance of temporary diversion ditches around the current working face.

1. The owner or operator shall specify the location of the temporary ditches in the operational plan required by 401 KAR 47:190.

2. ~~The~~and the ditches shall be approved by a professional engineer registered in the Commonwealth of Kentucky.

Section 9[8]. Waste Restrictions. (1) The owner or operator of a contained landfill shall only dispose of wastes that:

(a) Are not hazardous wastes regulated pursuant to 401 KAR Chapters 30 and 39~~through 40~~, except for limited quantity hazardous wastes and exempt spill residues;

(b) Do not contain free liquids as determined by the cabinet pursuant to KRS 224.10-100; and

(c) Are specified in the approved permit application.

(2) The owner or operator shall comply with the recordkeeping and reporting requirements~~[requirement]~~ of Section 11 of this administrative regulation pertaining to the location of disposed limited quantity hazardous waste and exempt spill residues.

Section 10[9]. Working Face Requirements. (1) Within two (2) hours of receipt, the owner or operator shall spread wastes in loose layers not exceeding twenty-four (24) inches in depth and compact it to the maximum practicable density.

(a) The owner or operator shall use the equipment specified in the permit for compaction. (b) The operator shall pass the

equipment over 100 percent of the waste surface at least four (4) times.

(c) Each loose layer shall be fully compacted before any additional waste is placed.

(2) The owner or operator shall not exceed the lift height specified in the permit.

(3) The owner or operator shall not place an initial lift containing any object that may damage the bottom liner. The owner or operator shall protect the liner system with a layer of dirt, waste, or similar blanket placed between operating equipment and the liner.

(4) The daily working face shall be restricted to the smallest area practical for working face operation.

(5) The completed cell shall consist of the solid waste compacted during one (1) working day.

(6)(a) The owner or operator shall prohibit scavenging within 100 feet of the working face. (b) All salvage and recycling shall occur at areas so designated in the permit.

(7) The owner or operator shall only allow access to the landfill ~~if~~when operating personnel are on the site.

(8) The owner or operator shall not accept solid waste at a rate that exceeds the rated capability of the operational compaction and cover equipment available on site.

(9) The owner or operator shall not accept solid waste without landfill personnel present to supervise the unloading.

(10) The grounds in and about a landfill shall not be allowed to become a nuisance.

(a) ~~If~~when necessary, interior fences may be required to prevent litter from blowing from the landfill.

(b) The permitted area shall be policed on a routine basis to collect all scattered material.

(11) All litter attributable to the site's operation shall be picked up within forty-eight (48) hours.

(12) Unless excluded from the site, large bulky items and other nonresidential wastes shall be deposited in a manner approved by the cabinet pursuant to KRS 224.10-100.

(13) The owner or operator shall conform to the posted operating hours for receiving waste and shall notify the cabinet of the operating hours before changing them. The entrance sign shall meet the requirements of Section 14(2) of this administrative regulation.

Section 11[10]. Employee Facilities. (1) The owner or operator of a contained landfill shall provide buildings meeting~~[Section 9 of]~~ 401 KAR 48:070, Section 9 requirements for site personnel.

(2) The buildings shall be maintained in a safe and sanitary manner.

(3) At least one~~One~~ (1) building shall have a safe drinking water supply.

Section 12[11]. Reports and Recordkeeping. Records and reports shall be maintained and submitted in accordance with~~[Section 8 of]~~ 401 KAR 47:190, Section 8.

Section 13[12]. Groundwater Monitoring. The owner or operator of a contained solid waste landfill shall implement the groundwater monitoring program in the approved application.

Section 14[13]. Closure and Closure Care Requirements. (1) The owner or operator shall comply with ~~these~~the following closure requirements established in paragraphs (a) and (b) of this subsection~~[-]~~:

(a) The owner or operator~~owner/operator~~ of a contained landfill shall prepare a written closure plan that describes the closure activities for each unit including~~[the following]~~:

1. a. The methods to be employed to maintain the integrity and effectiveness of any final cap, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cap; and~~[-]~~

b. The layer addressed in~~[Section 8(4) of]~~ 401 KAR 48:080, Section 8(4) shall have a maximum permeability less than or equal to the permeability of any bottom liner system or natural subsoils

present;

2. Maintenance and operation of the leachate collection system in accordance with the requirements, if applicable, until leachate no longer is generated;

3. Groundwater monitoring in accordance with the requirements of 401 KAR 48:300 and maintaining the groundwater monitoring system; and

4. Maintenance and operation of the explosive gas monitoring system in accordance with the requirements of Section 5[4] of this administrative regulation.

(b) The closure period shall be at least two (2) years following the cabinet's acceptance of the owner's[owners] certification of closure.

(2) The owner or operator of a contained landfill shall prepare and implement a written closure care plan that describes monitoring and routine maintenance activities that shall be carried out during the closure care period of at least thirty (30) years. The closure care plan shall include, at a minimum[~~the following information~~]:

(a) A description of the monitoring and maintenance activities for each unit and the frequency at which these activities shall be performed;

(b) The name[Name], address, and telephone number of the person or office to contact about the facility during the closure care period; and

(c) A description of the planned uses of the property during the closure care period.

1. Closure care use of the property shall not[~~be allowed to~~] disturb the integrity of the final cap, liner or liners[liner(s)], or any other components of the containment system, or the function of the monitoring systems, unless upon demonstration by the owner or operator, the cabinet determines that the activities shall not increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment.

2. The owner or operator shall obtain approval from the cabinet in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(3) The closure care plan shall be submitted with the permit application and shall be approved by the cabinet pursuant to KRS 224.10-100.

(a) Any subsequent modification to the closure care plan also shall be approved[proved] by the cabinet.

(b) A copy of the most recently approved closure care plan shall be kept at the facility at least until completion of the closure care period has been certified in accordance with subsection (5) of this section.

(4)(a) The owner or operator shall record a notice in the deed that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site, and a caution against future disturbance of the area.

(b) The[Such] notice shall be recorded in accordance with KRS Chapter 382, and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure.

(5) Following completion of all closure and closure care periods for each unit, the owner or operator of a contained landfill shall submit to the cabinet certification by a professional engineer, verifying that all phases of closure and closure care have been completed in accordance with the approved plans and the requirements of KRS Chapter 224.

Section 15[14]. Signs. (1) Warning signs shall be visible at all landfill access points.

(a) The warning signs shall be legible[readable] at a distance of 100 feet.

(b) The signs shall give warnings of all site hazards that might include[~~including but not limited to~~]: explosive gases, heavy equipment movement, and heavy truck movements.

(2) Entrance signs shall be visible, located at the public entrances and all entrances used by waste hauling vehicles.

(a) The signs shall be legible[readable] from 100 feet.

(b) The signs[They] shall indicate landfill name, name of the

owner, name of the operator, the hours of receiving wastes, the permit number, and an emergency telephone number.

Section 16[15]. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that the alternatives[they] shall result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from designs complying with the requirements[specifications] of this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017, at 6:00 p.m. in Training Room B of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for contained landfills.

(b) The necessity of this administrative regulation: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires owners or operators of solid waste sites or facilities obtain a permit. This administrative regulation sets forth the requirements for operating a permitted contained landfill.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires owners or operators of solid waste sites or facilities obtain a permit. This administrative regulation sets forth the requirements for operating a permitted contained landfill.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by clearly establishing the operating requirements for permitted contained landfills located in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment of this administrative regulation clearly establish requirements for the disposal of TENORM waste generated from oil and gas development activities containing combined Radium 226 and Radium 228 at concentrations exceeding limits established by 902 KAR 100:180. These requirements provide the criteria to be followed for the TENORM waste to be disposed in a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48.

(b) The necessity of the amendment to this administrative

regulation: The amendment to this administrative regulation is necessary to ensure the proper management and disposal of TENORM waste generated from oil and gas development activities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to KRS Chapter 224 as it pertains to the proper management, processing, or disposal of solid wastes. This amendment clarifies requirements for the proper disposal of TENORM waste generated from oil and gas development activities in a permitted contained landfill.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of KRS Chapter 224 by clarifying the proper disposal of TENORM waste generated from oil and gas development activities and ensuring the protection of human health and the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky. This administrative regulation will also affect any individual, business, or other organization engaging in the management, processing, and disposal of solid waste in Kentucky. Any producer of TENORM waste may potentially be impacted by this amendment as well.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Solid waste sites or facilities accepting TENORM waste for disposal in a permitted contained landfill must meet the operating requirements established in 902 KAR 100:180 and meet the final cap design requirements established in 401 KAR 48:080. The solid waste sites or facilities must also comply with daily cover of an additional six inches for a total minimum of twelve inches of cover over all exposed waste containing TENORM at the end of each working day or for continuously operating landfills, once every twenty-four hours. The amendment also clarifies the procedures for notifying the proper authorities if waste is disposed or discovered at a facility. Local governments may be impacted if they own or operate a solid waste facility that accepts TENORM waste under the requirements in this administrative regulation as well as requirements established in 902 KAR 100:180 and 401 KAR 48:080. This amendment may cause counties or solid waste management areas to renegotiate any host agreements they currently have with solid waste sites and facilities wishing to accept TENORM waste subject to administrative regulation. Producers of TENORM waste will potentially be affected by this amendment since this regulation clarifies the requirements for the management and disposal of TENORM waste in a permitted contained landfill. These requirements may affect the availability of solid waste sites and facilities that accept TENORM waste subject to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the costs to comply with the amendment would only increase for owners and operators of solid waste sites and facilities that choose to accept TENORM waste subject to this administrative regulation. While this cost is unknown, owners and operators would have to take all necessary steps to ensure employee safety, health, and training. Sites and facilities accepting TENORM waste subject to this administrative regulations will also have to ensure the proper equipment is in place for proper management and disposal. Since counties or solid waste management areas may need to renegotiate the contractual terms of host agreements with solid waste sites and facilities, there is potential for gate fees to increase. Producers of TENORM waste could potentially see disposal costs increase dependent on the cost and availability of disposal of TENORM waste subject to this administrative regulation in a permitted contained landfill.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment would only affect solid waste sites or facilities that choose to accept TENORM waste subject to this administrative regulation in a permitted contained landfill. If compliant with the requirements established in this administrative regulation, owners and operators would receive a protective benefit from lawsuits and litigation through their solid waste permit.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no substantial cost associated with the implementation of the amendment to this administrative regulation. As a whole, the cost to administer the solid and special waste program is \$2.9 million annually.

(b) On a continuing basis: There will be no substantial cost associated with the implementation of the amendment to this administrative regulation. As a whole, the cost to administer the solid and special waste program is \$2.9 million annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As a whole, the solid waste program utilizes a combination of general and restricted funds in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not require an additional funding source to continue implementation and enforcement of this administrative regulation.

(8) State whether or not the administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation does not apply tiering as it applies to all persons engaging in the management, processing, and disposal of solid waste.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky by establishing the requirements for the disposal of TENORM waste in a permitted contained landfill.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832, and 40 C.F.R. Part 258.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment of this administrative regulation would only generate revenue for local government agencies that own or operate solid waste sites or facilities that choose to accept TENORM waste to be managed and disposed of in a permitted contained landfill.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment of this administrative regulation would only generate revenue for local government agencies that own or operate solid waste sites or facilities that choose to accept TENORM waste to be managed and disposed of in a permitted contained landfill.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$2.9 million to operate the entire

solid waste program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$2.9 million to operate the entire solid waste program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this administrative regulation will likely have a minimal fiscal impact. The amendment would only have a fiscal impact for solid waste sites and facilities that choose to accept TENORM waste to be disposed of in a permitted contained landfill. Solid waste sites and facilities accepting TENORM waste would have additional operating costs to meet the requirements established in this administrative regulation. However, with clear requirements for the disposal of TENORM waste, the acceptance of TENORM waste subject to this administrative regulation could result in an increase revenue stream for solid waste sites and facilities.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) "Roederer Correctional Complex policies and procedures", June 28, 2017[August 4, 2016], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)
RCC 02-02-02 Inmate Personal Funds (Amended 6/28/17[05/15/12])
RCC 02-02-05 Inmate Canteen Services (Amended 6/28/17[05/15/12])
RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)
RCC 06-03-01 Records Release of Information (Amended 05/15/12)
RCC 08-01-01 Fire Prevention (Amended 7/26/13)
RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)
RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Amended 6/28/17[05/15/12])
RCC 09-29-01 Tobacco and Smoke Free Environment (Amended 8/4/16)
RCC 09-31-01 Firewood Cutting and Firewood Sales (Added 8/4/16)
RCC 10-01-02 Temporary Holding Cell[Guidelines] (Amended 6/28/17[7/8/14])
RCC 11-01-01 Food Service (Amended 6/28/17[6/14/16])
RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 6/14/16)
RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 6/28/17[05/15/12])
RCC 12-01-01 Sanitation, Living Conditions and Clothing

Issuance (Amended 6/28/17[05/15/12])
RCC 12-01-02 Bed Areas (Amended 7/8/14)
RCC 12-01-03 General Guidelines for Living Units (Amended 7/8/14)
RCC 12-02-01 Laundry Services (Amended 6/14/16)
RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 6/28/17[05/15/12])
RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/14)
RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 6/28/17[05/15/14])
RCC 13-03-01 Dental Procedures and Sick Call (Amended 6/28/17[6/14/16])
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 6/28/17[05/15/14])
RCC 13-07-03 Use of Pharmaceutical Products (Amended 6/28/17[05/15/14])
RCC 13-07-04 Self-Administered Medication Program (Amended 7/26/13)
RCC 13-09-01 Notification[~~of an Inmate's Family~~] Due to Serious Illness, Surgery, or Death (Amended 6/28/17[05/15/12])
RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12)
RCC 13-11-01 Informed Consent (Amended 05/15/12)
RCC 13-13-01 Identification and Transfer Procedures for Inmates with Psychological, Psychiatric, or Severe Medical Disabilities (Amended 8/4/16)
RCC 13-16-01 Specialized Health Services (Amended 7/8/14)
RCC 13-18-01 Infection Control (Amended 05/15/12)
RCC 13-19-01 Medical Waste Management (Amended 05/15/12)
RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12)
RCC 13-21-01 Mental Health Services (Amended 6/14/16)
RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 6/28/17[6/14/16])
RCC 14-01-01 Inmate Rights and Responsibilities (Amended 6/14/16)
RCC 14-02-01 Legal Services Program (Amended 6/28/17[05/15/12])
RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
RCC 14-05-01 Americans with Disabilities Act and Inmate Program Access (Amended 6/28/17[Added 6/14/16])
RCC 16-01-01 Inmate Visiting (Amended 6/28/17[6/14/16])
RCC 16-01-02 Restricted Visitation (Amended 8/4/16)
RCC 16-02-01 Telephone Communications (Amended 6/14/16)
RCC 16-03-01 Mail Regulations (Amended 6/28/17[8/4/16])
RCC 16-04-01 Parole Hearings: Media and Visitors (Added 6/28/17[7/26/13])
RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 6/14/16)
RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 6/28/17[8/4/16])
RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 6/14/16)
RCC 18-01-01 Classification (Amended 6/28/17[6/14/16])
RCC 19-01-01 Job and Program Assignments (Amended 6/28/17[6/14/16])
RCC 20-01-01 Education Program (Amended 6/28/17[6/14/16])
RCC 20-01-03 Vocational Horticulture Program (Amended 6/14/16)
RCC 21-01-01 Library Services (Amended 6/14/16)
RCC 22-01-01 Recreation and Inmate Activities (Amended 6/28/17[05/15/12])
RCC 22-03-01 Inmate Clubs and Organizations (Amended 6/28/17[6/14/16]) [RCC 22-03-02 Alcohol

RCC 22-04-01	Anonymous and Narcotics Anonymous Club Sponsored Picture Project (Amended 6/14/16)] Arts and Crafts Program (Amended 6/28/17[6/14/16])
RCC 23-01-01	Religious Services (Amended 6/28/17[6/14/16])
RCC 24-01-01	Social Services and Counseling (Amended 6/28/17[6/14/16])
RCC 25-01-01	Furloughs (Amended 05/15/12)
RCC 25-05-01	Inmate Discharge Procedure (Amended 6/28/17[6/14/16])
RCC 26-01-01	Citizens Involvement and Volunteer Services Program (Amended 6/28/17[8/4/16])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 28, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Roederer Correctional Complex (RCC) including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Roederer Correctional Complex. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Roederer Correctional Complex. It provides direction and information to employees and inmates concerning the operations of the institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment maintains the Roederer Correctional Complex compliance with ACA standards and updates practices for the institution.

(b) The necessity of the amendment to this administrative

regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the institution.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 254 employees and 1,152 inmates at the Roederer Correctional Complex and all volunteers and visitors to the institution.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to change their actions to comply with any operational changes made by this amendment. Others who enter RCC will have to comply with policies and procedures concerning entry, search, contraband and others when they enter the institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of RCC.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for Roederer Correctional Complex for the biennium.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation establishes fees for inmates, e.g. health services co-pays, photo ID fee, etc. The amendment does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operation of the Roederer Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standards requirements.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Roederer Correctional Complex operates. The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Roederer Correctional Complex for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Roederer Correctional Complex.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:230. Little Sandy Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Little Sandy Correctional Complex.

Section 1. Incorporation by Reference. (1) "Little Sandy Correctional Complex Policies and Procedures," June 28, 2017[September 11, 2012], are incorporated by reference. Little Sandy Correctional Complex Policies and Procedures include:

- LSCC 01-12-01 Public Information and Media Communication (Amended 6/28/17 [9/11/12])
- LSCC 02-01-03 Fiscal Management Agency Funds (Amended 6/28/17[Added 4/14/08])
- LSCC 06-01-01 Offender Records (Amended 6/28/17[Added 4/14/08])
- LSCC 08-01-01 Occupational Exposure to Serious and Infectious Diseases (Amended 6/28/17[Added 2/15/08])LSCC 10-01-01 Restrictive Housing Unit (Amended 6/28/17[9/11/12])
- LSCC 11-02-01 Food Service Security (Amended 6/28/17[Added 4/14/08])
- LSCC 11-03-01 Dining Room Rules (Added 6/28/17)
- LSCC 11-06-01 Health Requirement of Food Handlers (Amended 6/28/17[Added 2/15/08])
- LSCC 11-07-01 Food Service: Inspections and Sanitation (Amended 6/28/17[Added 4/14/08])
- LSCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Shop (Amended 6/28/17[9/11/12])
- [LSCC 12-02-01 Sanitation Inspections (Amended 9/11/12)]
- [LSCC 12-03-01 Vermin and Insect Control (9/11/12)]
- LSCC 13-02-01 Sick Call, Clinic, and Pill Call (Added 6/28/17)
- LSCC 13-02-02 Medical Services Co-payment (Added 6/28/17)
- LSCC 13-02-03 Continuity of Care: Health Evaluations, Intra-

- LSCC 13-03-01 System Transfer, Individual Treatment Plans (Amended 6/28/17[Added 2/15/08])
- LSCC 13-04-01 Use of Pharmaceutical Products (Amended 6/28/17[Added 2/15/08])
- LSCC 13-04-02 Health Records (Added 6/28/17)
- LSCC 13-05-01 Psychological and Psychiatric Reports (Added 6/28/17)
- LSCC 13-08-01 Management of Serious and Infectious Diseases (Added 6/28/17)
- LSCC 13-09-01 Eye Care (Added 6/28/17)
- LSCC 13-10-01 Dental Care (Added 6/28/17)
- LSCC 13-11-01 Transfers and Medical Profiles (Added 6/28/17)
- LSCC 13-12-01 Informed Consent (Added 6/28/17)
- LSCC 13-13-01 Medical Annex (Added 6/28/17)
- LSCC 13-15-01 Inmate Self-Administration of Medication (Amended 6/28/17[Added 2/15/08])
- LSCC 14-02-01 Health Education and Detoxification (Added 6/28/17)
- LSCC 15-01-01 Legal Services Program (Amended 6/28/17[Added 4/14/08])
- LSCC 16-01-01 Drug Abuse Testing (Amended 6/28/17[Added 2/15/08])
- LSCC 16-02-02 Inmate Visiting (Amended 6/28/17[Added 4/14/08])
- LSCC 16-03-01 Inmate Correspondence and Privileged Mail (Amended 6/28/17[Added 2/15/08])
- LSCC 17-01-01 Inmate Telephone Communications (Amended 6/28/17[Added 2/15/08])
- LSCC 18-01-01 LSCC Inmate Property Control (Amended 6/28/17[Added 4/14/08])
- LSCC 18-02-01 Inmate Classification (Amended 6/28/17[9/11/12])
- LSCC 19-01-01 Meritorious Housing (Amended 6/28/17[Added 2/15/08])
- LSCC 20-01-01 Inmate Work Program (Amended 6/28/17[Added 2/15/08])
- LSCC 22-02-01 Educational Programs (Amended 6/28/17[9/11/12])
- LSCC 24-01-01 Inmate Clubs and Organizations (Amended 6/28/17[Added 2/15/08])
- [LSCC 25-01-01 Social Services and Counseling Program (Added 6/28/17)
- LSCC 25-01-02 Pre-Release Program (7/11/12)]
- LSCC 26-01-01 Inmate Release Process (Amended 6/28/17[Added 4/14/08])
- Citizen Involvement and Volunteer Services Programs (Amended 6/28/17[Added 2/15/08])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 28, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street,

Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Little Sandy Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Little Sandy Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees and inmates concerning the procedures that govern operations of the institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment brings the Little Sandy Correctional Complex into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the Secretary or his authorized representative and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Little Sandy Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution and updates its practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 295 employees and 1022 inmates at the Little Sandy Correctional Complex and all volunteers and visitors to the institution.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with any operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Little Sandy Correctional Complex budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The amendment does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Little Sandy Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not generate any revenue for the Little Sandy Correctional Complex.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not generate any revenue for the Little Sandy Correctional Complex.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Department of Corrections.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," June 28, 2017[August 14, 2015], are incorporated by reference. Probation and Parole Policies and Procedures include:

27-06-02 Access to Services (Amended 6/4/15)

VOLUME 44, NUMBER 2 – AUGUST 1, 2017

- 27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/4/15)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 8/11/15)
- 27-09-01 Community Resources (Amended 6/4/15)
- 27-10-01 Pretrial Diversion (Amended 6/4/15)
- 27-10-02 Mandatory Re-Entry Supervision (Amended 6/4/15)
- 27-10-03 Post-incarceration Supervision (Amended 6/4/15)
- 27-11-01 Citizen Complaints (Amended 6/4/15)
- 27-11-02 Employee-Offender Interaction (Amended 6/4/15)
- 27-12-01 Case Classification (Amended 8/11/15)
- 27-12-03 Initial Interview and Intake of New Case (Amended 8/11/15)
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 6/4/15)
- 27-12-05 Releasee's Report Document (Amended 6/4/15)
- 27-12-06 Grievance Procedures for Offenders (Amended 6/4/15)
- 27-12-07 Administrative Caseloads (Amended 6/4/15)
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 6/4/15)
- 27-12-13 Community Service Work (Amended 8/11/15)
- 27-12-14 Offender Travel (Amended 6/4/15)
- 27-13-01 Drug and Alcohol Testing, Assessment, and Referral of Offenders (Amended 6/4/15)
- 27-14-01 Interstate Compact (Amended 6/4/15)
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 6/4/15)
- 27-15-02 Home Incarceration, Curfew, and Electronic Monitoring for Community Offenders (Added 6/4/15)
- 27-15-03 Graduated Sanctions and Discretionary Detention (Amended 6/28/17[6/4/15])
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 8/11/15)
- 27-17-01 Absconder Procedure (Amended 7/11/12)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 7/11/12)
- 27-19-01 Preliminary Revocation Hearing (Amended 6/4/15)
- 27-20-03 Parole Compliance Credit (Amended 6/28/17[3/4/2/4/2])
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11)
- 27-23-01 In-state Transfer (Amended 7/11/12)
- 27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)
- 27-24-02 Reinstatement of Offenders to Active Supervision (Amended 7/11/12)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12)
- 27-30-01 Sex Offender Registration (Amended 12/16/11)
- 27-30-02 Sex Offender Supervision (Amended 7/11/12)
- 28-01-01 Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)
- 28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 3/12/12)
- 28-01-08 Calculation of Custody Time Credit (Amended 9/11/12)
- 28-03-01 Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)
- 28-03-02 Release on Parole (Amended 12/16/11)
- 28-04-01 Furlough Verifications (Amended 7/11/12)

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JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 28, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017, at 9:00 a.m. at the Justice and Public Safety

Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of offenders on probation and parole.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.075, 439.3107, 439.3108, 439.3406(6), 439.470, and 439.562.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures relating to supervision of offenders on probation and parole and other types of supervised release.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establishes policies and procedures relating to supervision of offenders and provides direction and information to Probation and Parole employees in the supervision of offenders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment updates policies and procedures for the Division of Probation and Parole and addresses statute revisions in the last legislative session.

(b) The necessity of the amendment to this administrative regulation: To update policies and procedures and address statute revisions from the last legislative session for offenders on supervision for which regulations are required by the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates policy and procedures relating to supervision of offenders. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation and Parole.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders updated policies and procedures to comply with statutory changes and improve operations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 860 Kentucky Department of Corrections Division of Probation and Parole employees, 46,481 offenders, and 120 Circuit Courts and the Parole Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Department of Corrections staff will have to learn the updates in the policies and procedures. The Department will provide routine training to staff. Offenders will have to abide by revised policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change the cost for the offenders or other organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with statutory changes is required. Offenders, who are eligible, will benefit from legislative changes that allow for them to obtain supervised probation and parole supervision, more streamlined supervision processes, and focused intervention strategies. The Division of Probation and Parole will allocate resources to supervision services and programs according to nationally recognized evidence based practices.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Due to changes needed in the Kentucky Offender Management System, the cost is estimated to be approximately \$285,000.

(a) Initially: The amendment to the regulation updates supervision practices but does not add costs beyond what is budgeted to the Department of Corrections. The Department continues to staff as funding levels allow.

(b) On a continuing basis: The amendment to the regulation updates supervision practices but does not add costs beyond what is budgeted to the Department of Corrections. The Department continues to staff as funding levels allow.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders. This regulation also sets fees for drug testing required for offenders on supervision. No increase in fees has been made in this amendment.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operations of the Kentucky Department of Corrections, 120 Circuit Courts, and the Parole Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.037, 196.070, 196.075, 197.045, 439.310, 439.3106, 439.3107, 439.3108, 439.3406, 439.346, 439.348, 439.430, 439.470, 439.480, 439.551, 439.552, 439.561, 439.563, 532.050, 532.220, 533.020, 533.030, 533.050, 533.250, 533.256.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$150,000-200,000 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In CY 2016, the Division collected over \$819,000 in

drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds. This amendment does not affect revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated that the amount collected will be similar for subsequent years. This amendment does not affect revenue. This amendment will allow for eligible parolees to be released from supervision earlier due to supervised compliance credit; however, with the growing population, the increased use of discretionary detention, and immediate releases, it is estimated that revenue will not be affected by this amendment.

(c) How much will it cost to administer this program for the first year? For changes to the Offender Management System it is estimated to cost around \$285,000.

(d) How much will it cost to administer this program for subsequent years? The Department continues to staff as funding levels allow.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET

Department of Workplace Standards

Division of Occupational Health and Safety Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1153

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1153 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, or as provided under Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1153, revised as of July 1, 2016; and

(2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5.

Section 3. (1) The provisions of 29 C.F.R. 1926.1153 shall not be in effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of the standard.

(2) The construction industry shall comply with mineral dusts table for silica exposure in Appendix A to 29 C.F.R. 1926.55, as

adopted in 803 KAR 2:403, until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of 29 C.F.R. 1926.1153.

DERRICK K. RAMSEY, Chairman

APPROVED BY AGENCY: June 26, 2017

FILED WITH LRC: June 26, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 31, 2017 at 9:00 a.m. in the Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael G. Swansburg, General Counsel, Labor Cabinet, 1047 U.S. Highway 127 South Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3281, fax (502) 564-5484; and Brittany Thomas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1101 to 1926.1153, except as modified or provided in Section 1 or Section 3. Section 2 also updates the C.F.R. to July 2016 and establishes the amendments to Subpart Z, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. On April 6, 2017, OSHA announced that because the "construction standard for crystalline silica has a number of unique features warranting development of additional guidance materials," it had decided to delay enforcement of 29 C.F.R. 1926.1153 until September 23, 2017, "in order to provide the opportunity to conduct additional outreach to the regulated community and to provide additional time to train compliance officers." Section 3, therefore, provides that 29 C.F.R. 1926.1153 shall not take effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins to enforce the standard. Section 3(2) requires the construction industry to continue to comply with the exposure limits for silica that were in effect before the adoption of 29 C.F.R. 1926.1153 until enforcement of the new standards begins.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be as least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. 1926.1101 to 1926.1153, thereby ensuring that the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety

throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment aligns the deadline for the construction industry to comply with new requirements pertaining to exposure to crystalline silica, as set forth in 29 C.F.R. 1926.1153, with the compliance deadline established by the federal government.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the announcement from OSHA that additional time is needed to conduct outreach to the regulated community and to train compliance officers. The amendment ensures that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with federal compliance deadlines and ensures that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. Specifically, KRS 338.051 authorizes the Chairman of the Occupational Safety and Health Standards Board to adopt established federal standards if necessary to meet federal time requirements. As mentioned above, OSHA has delayed the enforcement of the final rule on silica exposure until September 23, 2017.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with the federal compliance deadline and will ensure that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Approximately 676,000 workplaces in the nation are expected to be affected by the final OSHA silica rule, which requires employers to implement engineering controls and work practices where employees are exposed to respirable crystalline silica. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training. Under the amendment to this administrative regulation, regulated entities will have until the compliance deadline established by OSHA to comply with the new standards set forth in 29 C.F.R. 1926.1153.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): According to OSHA, the annualized national cost of the rule is about one billion dollars, with a net benefit of around 3.8 to 7.7 billion dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is expected to result from the final rule, due to the consistency with the federal requirement, providing a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to the OSH Program or the Commonwealth generally to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the

OSH Program or the Commonwealth generally to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state restricted funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, KRS 13A.190, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? None.

(c) How much will it cost to administer this program for the first year? OSHA expects the rule to result in an annual costs of approximately 1,500 dollars to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in an annual costs of approximately \$1,500 to the average workplace covered by the rule.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: No information was specific to local governments, but estimated expenditures of about 560 dollars was given for smaller firms affected by the regulations.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:390. License renewals.

RELATES TO: KRS 243.090(1)

STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.090(1) requires the ~~board~~[Department of Alcoholic Beverage Control] to establish a year-round system for renewal of licenses. This administrative regulation establishes a year-round[the] system for license renewals and attendant requirements[renewal].

Section 1. Definition. "Batch renewal" means the simultaneous renewal of multiple licenses held by a licensee for more than two (2) premises.

Section 2. Monthly Renewal Schedule. (1) All licenses in Ballard, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trigg, Trimble, Union, and Webster Counties shall have an annual term beginning February 1 and ending January 31 of the following year and shall be renewed in the month of January by submitting the renewal application by January 31.

(2)[~~Section 3.~~] All licenses in Adair, Allen, Barren, Bath, Bell, Boyle, Breathitt, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd, Garrard, Harlan, Harrison, Hopkins, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Logan, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Owsley, Perry, Powell, Pulaski, Rockcastle, Russell, Simpson, Taylor, Todd, Warren, Washington, Wayne, and Whitley Counties shall have an annual term beginning May 1 and ending April 30 of the following year and shall be renewed in the month of April by submitting the renewal application by April 30.

(3)[~~Section 4.~~] All licenses in Anderson, Bourbon, Boyd, Bracken, Carroll, Carter, Franklin, Gallatin, Grant, Greenup, Henry, Lewis, Mason, Nicholas, Oldham, Pendleton, Pike, Robertson, Rowan, Scott, Shelby, Wolfe, and Woodford Counties shall have an annual term beginning July 1 and ending June 30 of the following year and shall be renewed in the month of June by submitting the renewal application by June 30.

(4)[~~Section 5.~~] All licenses in Jefferson County shall have an annual term beginning November 1 and ending October 31 of the following year and shall be renewed in the month of October by submitting the renewal application by October 31.

(5)[~~Section 6.~~] All licenses in Boone, Campbell, Fayette, and Kenton Counties shall have an annual term beginning December 1

and ending November 30 of the following year and shall be renewed in the month of November by submitting the renewal application by November 30.

~~(6)[Section 7.]~~ The license of a statewide or out-of-state licensee shall have an annual term beginning January 1 and ending December 31 of the same year and shall be renewed in December by submitting the renewal application by December 31.

Section 3[8]. Batch Renewals. (1) A licensee that holds multiple licenses for more than two (2) premises may renew the licenses by batch at the same time. To complete a batch renewal, a licensee shall notify the department in writing.

(2) All batch renewals shall have an annual term beginning September 1 and ending August 31 of the following year and shall be renewed in August by submitting the renewal application by August 31.

~~(3)[Section 9.] Unless a licensee notifies the department of its intent to renew premises licenses by batch renewal, licenses shall be renewed pursuant to Section 2 of this administrative regulation[as provided in Section 10 of this administrative regulation, a licensee that holds multiple licenses that cover multiple premises shall renew its licenses using the license expiration date based on the county of each premises.~~

Section 10. A licensee that holds multiple licenses for more than two (2) premises may renew the licenses by batch at the same time. A licensee who wants to renew premises by batch shall notify the department in writing. Upon written notification, the licenses shall then be renewed in August, as provided in Section 8 of this administrative regulation.

Section 11. A licensee that holds multiple licenses for more than two (2) premises shall not be required to send a letter requesting that its licenses be renewed separately unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch].

Section 4[12]. Renewal of Producer Licenses with Maximum Production Limits. (1) The following[All small farm winery, microbrewery, and Class B Craft distiller's] licensees shall, for the dates identified on the renewal application, submit;

(a) For Small Farm Wineries, the[required production reports with their renewal application forms. Small farm wineries shall submit copies of their] federal Report of Wine Premises Operation, TTB F 5120.17;

(b) For Microbreweries, the[, for time periods identified on renewal application forms. Microbreweries shall submit copies of their] federal Brewer's Report of Operations, TTB F 5130.9;

(c) For Class B Craft Distilleries, the[, for time periods identified on renewal application forms. Class B Craft Distilleries shall submit copies of their] federal Monthly Report of Production Operations, TTB F 5110.40; and

(d) For Class B Craft Rectifiers, the federal Monthly Report of Processing Operations, TTB F 5110.28.

~~(2)[511.40, for time periods identified on renewal application forms.~~

Section 13.] The department may deny a license renewal application[elect to not renew a license] if the licensee exceeds a production limit,[for its license type or] fails to meet required food sales percentages[required for its license type], or if the license renewal [of the license] would otherwise be contrary to law.

Section 5[14]. Renewal Grace Period. If a licensee fails to renew its license by the expiration date, the department shall grant not more than one (1) extension that[which] shall not exceed thirty (30) days from the original expiration date. The licensee shall not conduct any activity related to alcoholic beverages during the extension. A license not renewed during the thirty (30) day extension period shall not be renewed thereafter for any reason, and the licensee shall apply[reapply] for a new license.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 29, 2017

FILED WITH LRC: June 29, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 1:00 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth a system for year-round renewals of alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 243.090, 243.120, 243.155, and 243.157.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate reasonable regulations. KRS 243.090 requires the board to establish a year-round system of license renewals. KRS 243.090, 243.120, 243.155, and 243.157 allow reduced fees for producer licenses based upon maximum yearly production.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation assists the department by distributing the workload of license renewals throughout the calendar year. This regulation also allows the department to verify which producers are entitled to reduced licensing fees pursuant to KRS 243.090, 243.120, 243.155, and 243.157.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment specifies the documents required to renew a Class B Rectifier's license based on production amounts.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes to KRS 243.120.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment reflects the new Class B Rectifier's license.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the department in ensuring that only qualified rectifiers obtain the Class B license at a reduced fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All holders of 16,000 plus licenses issued by the department are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Rectifiers with Class B licenses will have to submit copies of federal production reports to the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not expected that rectifiers will incur any additional costs because they are already required to prepare and submit these production reports to the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau ("TTB").

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No costs.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is used to implement and enforce the amendment of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to amend this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations, and KRS 243.090 requires the board to establish a year-round system of license renewal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:400. Applications~~[ABC basic application and renewal form]~~ incorporated by reference.

RELATES TO: KRS~~[164.772,]~~ 241.060(1), 243.090, 243.380, 243.390, 243.630

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390, 243.630

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate~~[reasonable]~~ administrative regulations regarding matters over which the board has jurisdiction, including [governing procedures relative to the] applications for [and revocation of] licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license applications [application form]. KRS 243.630(5) and (6) require licensees to apply in writing for department approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten (10) percent or more ownership interest to a new person or entity. This administrative regulation prescribes the license applications utilized by the department [forms to be used to apply for and renew an alcoholic beverage license].

Section 1. Online [Initial] Application for Alcoholic Beverage License. (1) An applicant for an alcoholic beverage license shall complete the online application process and submit it electronically at the Online eServices Portal: <https://dppweb.ky.gov/eservices/>.

(2) To renew a license pursuant to KRS 243.090 and 804 KAR 4:390, a licensee shall complete the online renewal application process and submit it electronically at the Online License Renewal Portal-KYBOS:

<http://abc.ky.gov/Licensing/Pages/default.aspx> [complete _____ and submit to the department the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, out-of-state producer/supplier of malt beverage license, or a transporter license; or
(2) A temporary license].

Section 2. Transfer of Ownership Interest Application. (1) A buyer seeking to acquire, or a licensee seeking to transfer ten (10) percent or more ownership interest in a licensed business shall complete and submit the Transfer of Ownership Interest Application for ownership interest transfers between legally recognized entities, where the licensee will remain the same.

(2) Although a licensee is not required to file an application for ownership interest transfers of less than ten (10) percent, a licensee shall notify the department in writing of all ownership interest transfers of less than ten (10) percent of the licensed business [Application for License Renewal. A licensee seeking to renew a license pursuant to KRS 243.090 shall complete and submit to the department the Application for License Renewal].

Section 3. Written Application for Alcoholic Beverage License. If unable to complete an online application, an applicant shall complete and submit the appropriate application for the license type listed in subsections (1) to (8) in this Section:

(1) Basic License Application;

(2) License Renewal Application;

(3) Transporter's License Application;

(4) Out-of-State Supplier License Application;

(5) Special Agent's or Solicitor's License Application;

(6) Special Temporary License Application;

(7) Additional License(s) Application; or

(8) Transfer of Ownership Interest Application.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Basic~~[Application for Alcoholic Beverage]~~ License Application", June 2017~~[September 2016]~~;[and]

(b) "[Application for] License Renewal Application", June 2017 [May 2016-];

(c) "Transporter's License Application", June 2017;

(d) "Out-of-State Supplier License Application", June 2017;

(e) "Special Agent's or Solicitor's License Application", June 2017;

(f) "Special Temporary License Application", June 2017;

(g) "Additional License(s) Application", June 2017;

(h) "Transfer of Ownership Interest Application", June 2017;

(i) "Online eServices Portal", June 2017; and

(j) "Online License Renewal Portal-KYBOS", June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 7, 2017

FILED WITH LRC: July 10, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 1:45 pm Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies and incorporates by reference the applications utilized by the department.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify licensees of the applications utilized by the department and the information required by those applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations relating to licensing. KRS 243.380 and 243.390 require the department to set forth the information that is required to obtain or renew a license. KRS 243.630(5) and (6) require licensees to apply in writing for department approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten percent (10%) or more ownership interest to a new person or entity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the department to comply with statutory duties to promulgate license applications. The incorporated applications provide the department with information necessary to ensure licensees' compliance with statutory requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Substantial legislative changes to the alcoholic beverage laws beginning in 2013 have resulted in numerous amendments to this regulation and 804 KAR 4:410 because license types were eliminated, applications were consolidated, and requirements for various license types changed. The history of these substantial changes has ultimately resulted in both 804 KAR 4:400 and 804 KAR 4:410 containing license applications. This amendment places all applications used by the department in one regulation so that the public can easily locate applications. The department has also developed an online application and license renewal process for consumer convenience. This regulation implements the online license application process. The amendment also clarifies steps that must be taken with regard to ownership interest transfers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to organize the department's applications in a more logical manner and to utilize the online license application process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 authorize the board to determine the information that is required to obtain or renew a license. KRS 243.630(5) and (6) require licensees to apply in writing for department approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten percent (10%) or more ownership interest to a new person or entity.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a centralized location for all applications, making the regulation more user-friendly. Additionally, it allows applicants and licensees to apply for and renew licenses online, making applications more easily accessible to applicants and licensees. This regulation also allows the department to comply with KRS 243.630 for approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten percent (10%) or more ownership interest to a new person or entity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to apply for any alcoholic beverage license, or renew an alcoholic beverage license online, will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The required actions of individuals to complete an application in order to obtain a license are no different. The amendment simply changes where all applications are located for consumer ease and provides for online license applications and renewal. There will be no new action required of the department to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no increased cost for applicants as a result of this amendment. The department will be required to reallocate employee resources for implementation and monitoring of the online processes, but any associated cost will be minimal as the department will utilize existing resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide a more user-friendly regulatory scheme and allow online license applications and renewals for the convenience of consumers. This amendment will also clarify the requirements for ownership interest transfers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No extra costs are anticipated as a result of this amendment.

(b) On a continuing basis: No extra costs are anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used for the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary for this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding license applications. KRS 243.380 and 243.390 specifically authorize the board to create applications and to identify the information required within those applications.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect on expenditures or revenues as a result of the amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate any revenue.

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer the change to this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost to administer the change to this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no anticipated fiscal impact as a result of this amendment.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:410. Product registration and forms~~[Special applications and registration forms incorporated by reference].~~

RELATES TO: KRS 13A.110, 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390, 244.440, 244.585
NECESSITY, FUNCTION, AND CONFORMITY: KRS

241.060(1) authorizes the board to promulgate~~[reasonable]~~ administrative regulations regarding matters over which the board has jurisdiction. KRS 244.440 and KRS 244.585 require producers and importers to register product brands and flavors before offered for sale in the state. KRS 13A.110 provides that the board shall include, in regulation, all forms which the department requires to be completed and filed~~[governing procedures relative to the applications for licensing]~~. This administrative regulation prescribes product registrations and forms utilized by the department~~[incorporates by reference additional application forms for specific licenses and required registration forms]~~.

Section 1. Product Registration. Licensees required to register product brands and flavors shall use the Online Product Registration Portal to complete the online registration process~~at~~[Additional Application Forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable additional application form for the specific license type for which the application is made. The additional application forms are listed below:

- (1) Transporter/Solicitor/Out-Of-State Application;
- (2) Special Temporary License Application;
- (3) Supplemental License Application; or
- (4) Rectifier's License: Change of License Application.

Section 2. Registration Forms. If applicable, a licensee shall complete and submit the Product Registration Online form. ~~The form shall be completed electronically at~~ <https://www.productregistrationonline.com/GetStarted/Ky#selectPermit>.

Section 2[3].[Additional] Forms. A person~~[An applicable licensee]~~ shall complete and submit the following additional forms as needed or requested by the department:

- (1) Dormancy Request Form;
- (2) Non-Transfer Affidavit Form;
- (3) Credit/Debit Payment Form;
- (4) Refund Request Form;
- (5) Law Book Order Form;
- (6) Speaker Request Form;
- (7) Minors on Premises Request Form; and
- (8) Private Event Request Form~~[for Quota Retail Licenses;~~
- (2) Amendment to Application Authorization Form;
- (3) ABC Retailer Sampling Notification;
- (4) Request for Minors on Premises;
- (5) Affidavit of Ownership;
- (6) Affidavit of Non-Transfer;
- (7) Notice of Surrender of License(s);
- (8) Request to Participate in the Master File Licensing Process;
- (9) Application Request for Approval of Partial Transfer of Ownership to my Original License Application;
- (10) Remittance Form;
- (11) Order Form; or
- (12) Presentation/Speaker Request Form].

Section 3[4]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Online Product Registration Portal", June 2017;
- (b) "Dormancy Request Form", June 2017;
- (c) "Non-Transfer Affidavit Form", June 2017;
- (d) "Credit/Debit Payment Form", June 2017;
- (e) "Refund Request Form", June 2017;
- (f) "Law Book Order Form", June 2017;
- (g) "Speaker Request Form", June 2017;
- (h) "Minors on Premises Request Form", June 2017; and
- (i) "Private Event Request Form", June 2017;
- 2017["Transporter/Solicitor/Out-Of-State Application", July 2016;
- (b) "Special Temporary License Application", September 2016;
- (c) "Supplemental License Application", September 2016;
- (d) "Presentation/Speaker Request Form", March 2016;
- (e) "Product Registration Online", September 2014;
- (f) "Rectifier's License: Change of License Application", June 2016;

- (g) "Dormancy Request for Quota Retail Licenses", June 2013;
- (h) "Amendment to Application Authorization Form", May 2016;
- (i) "ABC Retailer Sampling Notification", September 2016;
- (j) "Request for Minors on Premises", June 2013;
- (k) "Affidavit of Ownership", June 2013;
- (l) "Affidavit of Non-Transfer", June 2013;
- (m) "Notice of Surrender of License(s)", June 2013;
- (n) "Request to Participate in the Master File Licensing Process", June 2013;
- (o) "Application Request for Approval of Partial Transfer of Ownership to my Original License Application", June 2013;
- (p) "Remittance Form", February 2016; and
- (q) "Order Form", 2015).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site: <http://www.abc.ky.gov>.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 29, 2017

FILED WITH LRC: June 29, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 1:15 pm Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies and incorporates forms utilized by the department.

(b) The necessity of this administrative regulation: KRS 244.440 and KRS 244.585 require producers and importers to register product brands and flavors before offered for sale in the state. KRS 13A.110 provides that the board shall include in regulation all forms which the department requires to be completed and filed. This administrative regulation prescribes product registrations and forms utilized by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations relating to the licensing and supervision and control of alcoholic beverages. KRS 13A.110 provides that the board shall include, in regulation, all forms which the department requires to be completed and filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the department to comply with statutory duties to incorporate required forms into regulation and ensure that all alcoholic beverage products are properly registered with the state.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The administrative regulation currently contains both applications and forms used by the department. A proposed amendment to 804 KAR 4:400 moves all applications to that regulation so that only forms are referenced in this regulation. Specifically, the department's proposed amendments move the following to 804 KAR 4:400: (i) Transporter/Solicitor/Out-Of-State License Application(s); (ii) Special Temporary License Application; (iii) Supplemental License Application; and (iv) Application Request for Approval of Partial Transfer of Ownership to my Original License Application. As part of the Red Tape Reduction Initiative, the department closely examined all forms used by the agency and this amendment removes unnecessary forms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to organize the applications and forms in a more logical manner. In combination with the amendments to 804 KAR 4:400, the proposed amendments to this regulation provide a more user-friendly regulatory scheme so that persons can locate needed applications and forms more easily. The amendment also benefits consumers by eliminating unnecessary "red tape" forms.

(c) How the amendment conforms to the content of the authorizing statutes: The department is authorized to promulgate administrative regulations pursuant to KRS 241.060(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment makes the forms more accessible and user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control and all holders of 16,000 plus licenses and potential licensees will be affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions to be taken by licensees or the department as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no increased cost to any of the identified entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide a more user-friendly regulatory scheme.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No extra costs are anticipated as a result of this amendment.

(b) On a continuing basis: No extra costs are anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used for the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary for this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect to expenditures or revenues as a result of the amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer the change to this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated change in cost to administer this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no anticipated fiscal impact as a result of this amendment.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 8:050. Signs on vehicles used.

RELATES TO: KRS 243.200[, 243.210]

STATUTORY AUTHORITY: KRS 241.060, 241.090, 243.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. Licensed manufacturers, wholesalers, distributors, and retailers may transport alcoholic beverages. KRS 243.200 authorizes the board to promulgate reasonable administrative regulations requiring licensees to display the licensee's name and state licensee number on vehicles used in governing the transportation of alcoholic beverages. KRS 243.200 requires licensees to agree to vehicle stops and inspections by authorized department investigators. This administrative regulation establishes sign requirements for vehicles transporting alcoholic beverages and authorizes department investigators to stop and inspect vehicles used to transport alcoholic beverages to make identification of vehicles transporting alcoholic beverages immediately recognizable to police officers and agents of this cabinet, this administrative regulation states, with particularity, the types of signs which must be placed on any vehicle used in transporting alcoholic beverages].

Section 1. Vehicle Signs. (1) Licensed manufacturers, wholesalers, distributors, retailers, and transporters shall display the licensee's name and license number on all vehicles used to transport alcoholic beverages.

(2) The display required by subsection (1) of this section shall be [Signs required on trucks, wagons, and other vehicles used by distillers, retailers, rectifiers, wineries, wholesalers, brewers,

distributors, and transporters, in transporting alcoholic beverages shall be]:

(a) Painted, magnetic, or adhesive decals or lettering in a color that contrasts with the color of the vehicle [or printed, or affixed magnetically or adhesively with letters in a color contrasting with the color of that portion of the truck or vehicle upon which the sign is placed]; and

(b) Placed upon the right and left windows or sides of the vehicle in [uniform] letters that are at least one (1) inch tall.

Section 2. Vehicle Inspections. Any vehicle used by a licensee to transport alcoholic beverages shall be subject to a stop and inspection of the vehicle and its contents at any time by authorized department investigators without first obtaining a search warrant. [of not less than three (3) inches high in the following from:

"(Name of Licensee)

Ky. (type) License

No. _____"

(2) The following words, and no others, may be abbreviated: Kentucky, (Ky.); Wholesaler, (Whol.); Distiller, (Dist.); Rectifier, (Rect.); Vintner, (Vint.); Brewer, (Brew.); Distributor, (Distr.); Transporter, (TS, and or MT); Company, (Co.); Limited Liability Company, (LLC); Limited Liability Partnership, (LLP); Incorporated, (Inc.); Retailer, (Ret.); and Corporation, (Corp.)]

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 29, 2017

FILED WITH LRC: June 29, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 1:30 pm Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies and defines the requirements for vehicles used to transport alcoholic beverages.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify the requirements for vehicles used to transport alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the licensing, supervision, and control of alcoholic beverages. KRS 243.200 authorizes the board to promulgate administrative regulations regarding the vehicles used for transporting alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes sign requirements for vehicles transporting alcoholic beverages to permit department investigators to identify vehicles engaged in conduct regulated by the department.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment removes the three (3) inch requirement for lettering on transporting vehicles and replaces it with a one (1) inch height requirement. The regulation no longer requires letters to be uniform so licensees may use logos for easier compliance and business branding purposes. The amendment also specifically allows department investigators to stop and inspect vehicles used to transport alcoholic beverages, pursuant to KRS 243.200 and KRS 241.090.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to state requirements, based upon changes reflected in House Bill 183, that permit department inspectors to identify vehicles used for the transportation of alcoholic beverages.

(c) How the amendment conforms to the content of the authorizing statutes: The department is authorized to promulgate administrative regulations pursuant to KRS 241.060(1). KRS 243.200 specifically authorizes the board to promulgate administrative regulations for signs on vehicles used for the transportation of alcoholic beverages. Pursuant to KRS 243.200, licensees agree to specifically allow department investigators to stop and inspect vehicles used to transport alcoholic beverages. KRS 241.090 further provides department investigators with constitutionally permissible authority to perform warrantless inspections to supervise the alcoholic beverage industry. See *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *Duke v. Commonwealth of Kentucky* 474 S.W.2d 885 (Ky. 1971).

(d) How the amendment will assist in the effective administration of the statutes: This regulation identifies sign requirements for vehicles transporting alcoholic beverages so department investigators may identify those vehicles engaged in conduct regulated by the department. This regulation also permits department investigators to stop and inspect those vehicles transporting alcoholic beverages.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department and all licensees of the department who transport alcoholic beverages are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will not require any additional actions on the part of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have more flexibility in the lettering requirements for those vehicles used to transport alcoholic beverages. Lettering will not have to be uniform. Therefore, company logos will be sufficient to meet the regulatory requirement, which will foster licensee compliance and allow company branding. This amendment permits department investigators to stop and inspect vehicles used to transport alcoholic beverages.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated costs with the implementation of this amendment.

(b) On a continuing basis: There are no anticipated costs with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used for the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary for this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.200, as amended by the enactment of House Bill 183, authorizes the board to promulgate administrative regulations specifically identifying requirements of vehicles transporting alcoholic beverages. Pursuant to KRS 243.200, licensees agree to specifically allow department investigators to stop and inspect vehicles used to transport alcoholic beverages. KRS 241.090 further provides department investigators with constitutionally recognized warrantless inspection powers of the alcoholic beverage industry. See, *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *Duke v. Commonwealth of Kentucky* 474 S.W.2d 885 (Ky. 1971).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect to expenditures or revenues as a result of the amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer the change to this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated change in cost to administer this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no anticipated fiscal impact as a result of this amendment.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:060. Plugging wells[; noncoal-bearing strata].

RELATES TO: KRS 211.892, 211.893, 353.180(1), 353.550
STATUTORY AUTHORITY: KRS[43A.100,] 353.560(1), 353.739

NECESSITY, FUNCTION, AND CONFORMITY: KRS

353.560(1) requires the department to regulate the plugging of all wells. This administrative regulation identifies the minimum acceptable requirements to plug or temporarily abandon wells [drilled through non-coal-bearing strata].

Section 1. Definitions. (1) "Abandoned" is defined by KRS 353.510(12).

(2) "Cement" is defined by KRS 353.010(4).

(3) "Pool" is defined by KRS 353.510(9).

(4) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(5) "Unit" is defined by KRS 353.010(18).

(6) "Well" is defined by KRS 353.510(14).

Section 2. Temporary Abandonment Permit. (1) An owner or operator shall not leave a well drilled for oil, gas, salt water disposal, or any other purpose in connection with the production of oil and gas unplugged after the well is no longer used for the purpose it was drilled or converted.

(2) An owner or operator who wants to temporarily abandon a well shall apply for a permit from the division on the Temporary Abandonment Permit form ED-12.

(3)(a) Nothing herein shall prevent the division, upon application and for good cause shown, from issuing a temporary abandonment permit, for a period not to exceed two (2) years. Nothing shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The temporary abandonment permit may be renewed at the end of the two (2) year period by reapplication on the Temporary Abandonment Permit form ED-12.

(b) All wells on which a temporary abandonment permit has been issued shall be cased and capped prior to temporary abandonment in a manner so as to protect all potential oil, gas, and fresh water zones.

(4) Each oil and gas well drilled through coal bearing strata shall be cased and vented in a manner to prevent the accumulation of gas in the bore hole.

(5) Pursuant to KRS 353.739, the division shall order a well drilled through a workable coal bed to be plugged and abandoned if:

(a) The well's permit conditions cannot be satisfied by remediation; or

(b) The operator is not able to meet the ordered remediation.

(6) If a well is ordered plugged and abandoned pursuant to KRS 353.739, then a temporary abandonment permit shall not be granted.

Section 3. Notice for Plugging an Oil or Gas Well. (1)(a) Before work is commenced to plug and abandon a well, the owner or operator shall give notice to the division of their intention to abandon the well.

(b) A representative of the division shall provide plugging and abandonment direction and may be present at the time of plugging the well.

(2) The notice for plugging wells shall include at a minimum:

(a) The permit number of the well;

(b) The location of the well; and

(c) A fixed time when the work of plugging and filling will be commenced. The time shall not to be less than five (5) days after the day on which the notice is received by the division.

(3)(a) In addition to the requirements of subsection (2) of this section, an operator of a well drilled through a workable coal bed shall notify, by certified mail, the owners of record, lessee of record, and operators of the coal bed and the proper oil and gas inspector of the intention to plug and abandon the well.

(b) A representative of the coal operator or owner may be present at the plugging and filling of the well.

Section 4. Plugging an Oil and Gas Well in Non-coal Bearing Strata. A well drilled through non-coal bearing strata shall be plugged as established in subsections (1) through (6) of this section.

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation whenever possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3)(a) A surface cement plug not less than fifteen (15) feet in length shall be placed at the top of the well and cemented to surface.

(b) The casing shall be cut off three (3) feet below surface in a manner as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with approved heavy mud up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and casing cannot be pulled may be plugged as follows:

(a) The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill; and

(b) A surface plug shall be placed as established in subsection (3) of this section. An intermediate plug shall not be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) Other method approved by the director.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

Section 5. Plugging an Oil and Gas Well in Coal-bearing Strata. Wells drilled through a workable coal bed, including for the extraction of coal bed methane, shall be plugged and abandoned as established in subsections (1) through (7) of this section.

(1) A cement plug shall be placed to a point forty (40) feet below the lowest workable coal bed.

(a) The hole shall be filled with cement from the bottom to a point twenty (20) feet above the top of the lowest oil, gas, or water-bearing strata; or

(b) A permanent bridge shall be anchored thirty (30) feet below its lowest oil, gas, or water-bearing strata, and from the bridge it shall be filled with cement to a point twenty (20) feet above the strata.

(2) Following compliance with the requirements of subsection (1)(a) or (b) of this section a cement plug shall be used to completely seal the hole.

(3)(a) Between the sealing plug referenced in subsection (2) and a point twenty (20) feet above the next higher oil, gas, or water-bearing strata, the hole shall be plugged in accordance with subsections (1) and (2) of this section. Another cement plug shall be installed above this oil, gas, or water-bearing strata in accordance with subsection (2) of this section.

(4) In accordance with subsection (1) through (3) of this section, the hole shall be filled and plugged or bridged, filled, and plugged, in each of its oil, gas, or water-bearing strata. If these strata are not widely separated and are free from water, the strata may be grouped and treated as a single productive stratum.

(5) After plugging all strata a final surface plug shall be anchored approximately ten (10) feet below the bottom of the largest casing in the well and from that point to the surface, the well shall be filled with cement.

(6) The operator shall place cement in the hole in one of the following ways:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) A method approved by the director.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an

Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

(8) If any of the strata in the well have been completed or stimulated, creating cavities that cannot readily be filled in the manner established in subsections (1) through (7) of this section, the well operator shall follow either of the following methods:

(a) If the stratum that has been completed or stimulated is the lowest one in the well, there shall be placed, at the nearest suitable point but not less than twenty (20) feet above the stratum, a plug of cement or other suitable material that shall completely seal the hole; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, plugging in the manner established shall be done at the nearest suitable point, but not less than twenty (20) feet below and above the stratum completed or stimulated; or

(b) If the cavity is in the lowest oil or gas-bearing stratum in the well, a liner shall be placed that shall extend from below the stratum to a suitable point, but not less than twenty (20) feet above the stratum in which the completion or stimulation has been done; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, the liner shall be so placed that it shall extend not less than twenty (20) feet above or less than twenty (20) feet below the stratum in which completion or stimulation has been done. After the liner is placed, it shall be compactly filled with cement, clay, or other nonporous sealing material.

(9) Once a well drilled through coal-bearing strata has been filled and securely plugged to a point forty (40) feet below the lowest workable coal bed, and in the judgment of the well operator, the coal operator, and the division a permanent outlet to the surface is required, the outlet shall be provided in the following manner: A plug of cement shall be placed in the well at a depth, not less than ten (10) feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe, not less than two (2) inches in diameter, which shall extend to the surface. At or above the surface the pipe shall be provided with a device that shall permit the free passage of gas and prevent obstruction. After the plug and pipe are set, the hole shall be filled with cement to a point ten (10) feet above the lowest workable coal bed. If there are additional overlying workable coal beds, they shall be treated similarly, if this treatment is necessary in the reasonable judgment of the well operator, the coal operator, and the division. If the parties cannot agree, the decision of the division shall control.

Section 6. Oil and Gas Wells used as Fresh Water Wells. (1) If a well drilled through non-coal-bearing strata is to be plugged and can safely be used as a fresh water well, and if the utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; if a written authority for the use is secured from the landowner and filed with the division.

(2)(a) If the well to be plugged is drilled through coal-bearing strata and can safely be used for a fresh water well, and the utilization is desired by the landowner and is agreeable to the owner or operator of all coal-bearing strata beneath the location of the well, the well shall not be filled above the required sealing plug set below fresh water; if written authority for the use is secured from the landowner, and coal owner or operator, and filed with the division.

(b) In order for the operator to be released of any further plugging responsibility, the operator shall provide to the division evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 7. Downhole Disposal of TENORM Contaminated Material. (1) On-site downhole disposal of tubular goods, sludge, and scale containing TENORM shall be allowed by the Division of Oil and Gas in combination with plugging and abandonment of an oil or gas production well if an inspector from the Division of Oil and Gas is present for the duration of the disposal and plugging activity and the following standards are met:

(a) The operator shall certify that the owner of the oil and gas

rights covering the depths and formations where the TENORM waste is proposed to be disposed has consented, by lease or other document, to allow the on-site disposal of TENORM waste:

(b) The TENORM waste shall be limited to that generated at the lease, pool, or unit where disposal is proposed;

(c) The TENORM waste shall be placed in the well at a depth of at least 200 feet below the base of the deepest encountered underground source of drinking water with a total dissolved solids concentration of 10,000 ppm or less;

(d) The TENORM waste shall be placed in the well in a manner approved by the division;

(e) A cement plug shall be placed below the TENORM waste, isolating the waste from any producing formation and preventing migration of TENORM waste below the disposal interval. The well shall be cemented from above the TENORM waste to the top of the well;

(f) The cement of the surface plug shall be color dyed with red iron oxide; and

(g) A permanent marker that shows the three (3) bladed radiation symbol shall be placed at the top of the surface cement plug or welded to a steel plate at the top of the well casing at ground level.

(2) The operator shall apply to dispose of TENORM downhole, on Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39, which shall, at a minimum, contain the following information:

(a) A description of the type of TENORM waste disposed;

(b) The approximate volume of each type of waste disposed;

(c) Results of activity concentration analysis in picocuries per gram (pCi/g) or radiation dose rate measured through the use of portable radiation detector appropriate for the radiation being measured, calibrated at least annually, and reported in microrentgen per hour (µR/hr) or microrem per hour (µrem/hr);

(d) The name, permit number, and GPS location of the well to be plugged in which TENORM waste is proposed to be disposed; and

(e) The formation or formations from which the TENORM waste originated.

(3) A copy of the Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39 shall be provided to the Cabinet for Health and Family Services, Radiation Control Branch, the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed, and to the owner of the surface estate at the time of filing of the application with the division.

(4) The division shall review the Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39 for completeness and for compliance with the information in subsection (2) of this section in order to prevent migration of TENORM contaminated wastes from the borehole.

(5) The division shall provide written notice to the applicant of its approval or denial of the application. If the application is denied, the division shall notify the applicant in writing of the additional information necessary to satisfy the requirements of this section.

Section 8. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated and drilled by other persons.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Affidavit to Time and Manner of Plugging and Filling Well", Form ED-38, July 2017.

(b) "Temporary Abandonment Permit", Form ED-12, July 2017;

and

(c) "Application for Authorization for Down-Hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations", Form ED-39, July 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Unless written permission shall be obtained from the department, no operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. However, nothing herein shall prevent the department, upon application and for good cause shown, from issuing a temporary permit, for a period not exceeding two (2) years, to an operator to leave a well unplugged, and nothing herein shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The permission for temporary abandonment may be renewed at the end of the two (2) year period by reapplication. All wells on which a temporary abandonment permit has been issued shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones and fresh water.

Section 2. Before any work is commenced to plug and abandon any well the owner or operator thereof shall give notice to the department of his intention to abandon such well. Notice shall be given in the manner specified by the department. A duly authorized representative of the department may be present at the time and place specified to supervise the plugging of such well.

Section 3. Wells not drilled through coal-bearing strata may be plugged as follows:

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation whenever possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3) A plug shall be placed at the surface of the ground in each hole plugged in such a manner as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with approved heavy mud up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall also be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and no casing can be pulled may be plugged as follows: The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill. A surface plug shall be placed as provided in subsection (3) of this section. No intermediate plugs will be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

- (a) Dumb bailer;
- (b) Pumping through tubing;
- (c) Pump and plug; or
- (d) Other method approved by the director.

Section 4. Within thirty (30) days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging report with the department setting forth in detail the method used in plugging the well. Such report shall be made on a form provided by the department.

Section 5. When the well to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set

below fresh water; provided, that written authority for such use is secured from the landowner and filed with the department.

Section 6. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated, and drilled by other persons.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by August 15, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the minimum acceptable requirements to plug or temporarily abandon wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish plugging requirements for oil and gas wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This administrative regulation conforms to the authorizing statutes by establishing plugging requirements for oil and gas wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing oil and gas operators the necessary information to meet the division's plugging requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to the down-hole disposal of TENORM wastes as well as merge two other plugging regulations into this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate three administrative regulations related to plugging oil and gas wells into one administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates plugging administrative regulations for oil and gas wells, which is authorized by KRS 353.560.

(d) How the amendment will assist in the effective

administration of statutes: These amendments consolidate plugging administrative regulations for oil and gas wells as well as establishing the requirements for down-hole disposal of TENORM wastes and plugging requirements for the TENORM waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,000 active oil and gas operators in the commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same plugging requirements as in the past but will also be required to meet additional plugging standards when disposing of TENORM contaminated wastes down the bore hole.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs for plugging wells that will not be used to disposing TENORM wastes. However, there are additional plugging requirements for those wells that are disposing TENORM wastes down-hole.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to the plugging of oil and gas wells in one administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operator.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 211.892, 211.893, 353.560, 353.738, and 353.739

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 3:210. Privacy of consumer financial and health information.

RELATES TO: KRS 304.2-105,~~[KRS 304.12-170,]~~ 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act

STATUTORY AUTHORITY: KRS 304.2-105, 304.2-110, 15 U.S.C. 6801(b), 6805, the Gramm-Leach-Bliley Act

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the ~~commissioner~~~~[Executive Director]~~ of the Department of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. The Gramm-Leach-Bliley Act, 15 U.S.C. 6801(b) and 6805, requires~~[require]~~ state insurance commissioners to establish standards for insurers, agencies, and agents to safeguard the security and confidentiality of consumer records and information. 15 U.S.C. 6801 to 6810 applies to financial institutions engaging in financial activities such as "insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for the purpose of the foregoing, in any State." 12 U.S.C. 1843(k)(4)(B). This administrative regulation extends the application to protect individuals "who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees," in harmony with the federal regulations~~[of the federal functional regulators]~~. This stricter standard will hold all Kentucky licensees to the same standard, protect the privacy of Kentucky citizens, and promote uniformity of state insurance administrative regulations across state borders because ~~[since]~~ this administrative regulation is ~~[was]~~ based on a national model adopted by the National Association of Insurance Commissioners, ~~[and all states are imposing similar standards by statute or regulation.]~~ Although~~[The]~~ federal law does not prohibit financial institutions from discriminating against individuals who have used their right to opt out or refused to grant authorization to disclose nonpublic personal financial information, this~~[This]~~ administrative regulation ~~[is stricter in that it]~~ protects Kentucky citizens~~[who choose to use their rights to opt-out of disclosure]~~ from discrimination. This administrative regulation establishes security requirements for an insurer's, agency's, or agent's use of consumers' financial and health information.

Section 1. Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice that is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee

organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" means:

(a) An individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or that individual's legal representative.

(b) A "consumer" shall include:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;

2. An applicant for insurance prior to the inception of insurance coverage;

3. An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 14, 15, and 16 of this administrative regulation, if:

a. The individual is a beneficiary of a life insurance policy underwritten by the licensee;

b. The individual is a claimant under an insurance policy issued by the licensee;

c. The individual is an insured or annuitant under an insurance policy or an annuity issued by the licensee; or

d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.

(c) An individual shall not be a "consumer" solely on the basis that:

1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;

2. An individual is a beneficiary of a trust for which the licensee is a trustee;

3. An individual has designated the licensee as trustee for a trust; or

(d) An individual shall not be a "consumer" solely based on the status listed in subparagraph 2a through c of this paragraph, if:

1. The licensee provides the initial, annual, and revised notices under Sections 5, 6, and 9 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder, group annuity contract holder, or workers' compensation plan participant; and

2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 14, 15, and 16 of this administrative regulation, about an individual who is:

a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensee; or

c. A beneficiary in a workers' compensation plan.

(e) The individuals described in paragraph (b)3a through c of this subsection shall be consumers of a licensee if the licensee fails to meet all the conditions of paragraph (b)1 and 2 of this subsection.

(8) "Consumer reporting agency" is defined in 15 U.S.C. 1681a(f) of the federal Fair Credit Reporting Act.

(9) "Continuing relationship" means a relationship between a consumer and a licensee if:

(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(b) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from

the licensee for a fee.

(c) A consumer shall not be deemed to have a continuing relationship with the licensee if:

1. The consumer applies for insurance but does not purchase the insurance;

2. The licensee sells the consumer airline travel insurance in an isolated transaction;

3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

5. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

6. The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

7. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

8. The individual's last known address according to the licensee's records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

(10) "Control" means:

(a) Ownership, control, or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;

(b) Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or

(c) The power to exercise a controlling influence over the management or policies of the company.

(11) "Customer" means a consumer who has a customer relationship with a licensee.

(12) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(13) "Designed to call attention" means that the notice:

(a) Uses a plain-language heading;

(b) Uses a typeface and type size that are easy to read;

(c) Provides wide margins and ample line spacing;

(d) Uses boldface or italics for key words; and

(e) Is in a form that combines the licensee's notice with other information and uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(f) If a licensee provides a notice on an Internet Web page, "designed to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the Web site do not distract attention from the notice, and the licensee either:

1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

2. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution" means any institution engaging in activities that are financial in nature or incidental to financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 at 12 U.S.C. 1843(k).

(a) "Financial institution" shall not include:

1. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 U.S.C. 1 to 27f of the Commodity Exchange Act;

2. The federal Agricultural Mortgage Corporation or any entity chartered and operating under 12 U.S.C. 2001-2279cc of the Farm Credit Act of 1971; or

3. Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(15) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in Section 4(k) of the Bank Holding Company Act of 1956 at 12 U.S.C. 1843(k).

(a) "Financial service" shall include a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures, tests, or counseling that:

(a) Relates to the physical, mental, or behavioral condition of an individual; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(c) Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(18) "Health care provider" is defined in KRS 304.17A-005(23).

(19) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present, or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(20) "Insurance product or service" means any product or service that is offered by a licensee, pursuant to KRS Chapter 304.

(a) "Insurance service" shall include a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(21) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(22) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304.

(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, "the principal", and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.

(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this administrative regulation, except as permitted by Section 15 or 16 of this administrative regulation; and

2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:

"PRIVACY NOTICE - NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(d) A licensee shall not include registered service contract makers as defined in 806 KAR 5:060.

(23) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is required or:

(a) Is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Is a usual, appropriate, or acceptable method:

1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;

3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

a. Account administration;

b. Reporting;

c. Investigating or preventing fraud or material misrepresentation;

d. Processing premium payments;

e. Processing insurance claims;

f. Administering insurance benefits, such as utilization review activities;

g. Participating in research projects; or

h. As otherwise required or specifically permitted by federal or state law; or

6. In connection with:

a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

b. The transfer of receivables, accounts, or interests; or

c. The audit of debit, credit, or other payment information.

(24) "Nonaffiliated third party" means any person who is not:

(a) A licensee's affiliate; or

(b) Employed jointly by a licensee and a company that is not the licensee's affiliate.

(c) "Nonaffiliated third party" shall include:

1. Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 U.S.C. 1843(k)(4)(H) and (I) of the federal Bank Holding Company Act; and

2. A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(25) "Nonpublic personal financial information" means:

(a) Personally-identifiable financial information; and

(b) Any list, description, or other grouping of consumers, and publicly-available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

(c) "Nonpublic personal financial information" shall include any list of individuals' names and street addresses that is derived in whole or in part using personally-identifiable financial information that is not publicly available, such as account numbers.

(d) "Nonpublic personal financial information" shall not include:

1. Health information subject to Section 18 of this administrative regulation;

2. Publicly-available information, except as included on a list described paragraph (b) or (c) of this subsection; or

3. Any list, description, or other grouping of consumers and publicly-available information pertaining to them that is derived without using any personally-identifiable financial information that is not:

a. Publicly available, including any list of individuals' names and addresses that contains only publicly-available information;

b. Derived in whole or in part using personally-identifiable financial information that is not publicly available; and

c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(26) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information may be used to identify an individual.

(27) "Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15, and 16 of this administrative regulation.

(28) "Personally-identifiable financial information" means information:

(a) That a consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.

(d) "Personally-identifiable financial information" shall include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. The fact that an individual is or has been one (1) of the licensee's customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a Web server; and

7. Information from a consumer report.

(e) "Personally-identifiable financial information" shall not include:

1. Health information subject to Section 18 of this administrative regulation;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(29) "Publicly-available information" means any information that a licensee has a reasonable basis to believe is lawfully made

available to the general public from:

(a) Federal, state, or local government records;

(b) Widely-distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state, or local law.

(30) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:

(a) That the information is the type that is available to the general public; and

(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(31) "Reasonably understandable" means a notice:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists, if possible;

(c) Uses definite, concrete, everyday words and active voice, if possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology, if possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

Section 2. Purpose and Scope. This administrative regulation governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees. (1) This administrative regulation:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal financial information and nonpublic personal health information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) This administrative regulation applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

Section 3. Compliance. A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (Pub.L. 102-106) may be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Section 4. Rules of Construction. (1) The examples, sample clauses, and Model Privacy Form in the material incorporated by reference are not exclusive. Compliance with an example, use of a sample clause, or Model Privacy Form, to the extent applicable, shall constitute compliance with this administrative regulation.

(2) Licensees may rely on use of the Model Privacy Form, consistent with the instructions, as a safe harbor compliance with the privacy notice content requirements of this administrative regulation.

(3) Sample Clauses and Examples, PVCY-01 (11/01 Edition). The Samples Clauses and Examples, incorporated by reference by this administrative regulation, contain sample clauses and examples for the following:

(a) Establishment of a customer relationship, referenced in Section 5;

(b) Exceptions to the required Initial Privacy Notices to Consumers, referenced in Section 5;

(c) The annual privacy notice to customers, referenced in Section 6;

(d) Customer terminations, referenced in Section 6;
 (e) Obtaining privacy notices, referenced in Section 7;
 (f) Samples clauses of the notice content required by Section 7; and

(g) Joint consumer opt outs, referenced in Section 8.

(4) Use of the Model Privacy Form is not required. Licensees may continue to use other types of privacy notices, including notices that contain examples and sample clauses in the material incorporated by reference, provided that such notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this administrative regulation. However, while licensees may continue to use privacy notices that contain examples or sample clauses, licensees may not rely on use of privacy notices with the sample clauses incorporated by reference as a safe harbor of compliance with the notice content requirements of this administrative regulation after July 1, 2019.

Section 5. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16 of this administrative regulation.

(2) When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16 of this administrative regulation, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship when the licensee and the consumer enter into a continuing relationship.

(4) Existing customers. If an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9 of this administrative regulation, that covers the customer's new insurance product or service; or

(b) If the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of this section.

(5) Exceptions to allow subsequent delivery of notice. A licensee may provide the initial notice required by subsection (1) of this section within a reasonable time after the licensee establishes a customer relationship if:

1. Establishing the customer relationship is not at the customer's election; or

2. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10 of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section

7(4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 7(4)(c) of this administrative regulation.

Section 6. Annual Privacy Notice to Customers Required. (1) General rule. Except as provided in subsection (3) of this section, a licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(2) Termination of customer relationship. A licensee shall not be required to provide an annual notice to a former customer.

(3) Exception to annual privacy notice requirement.

(a) A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 14, 15, or 16 of this administrative regulation and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section.

(b) At any time a licensee fails to comply with any of the exception criteria described in subsection (3)(a), the licensee shall be required to provide the annual privacy notice required under subsection (1).

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10 of this administrative regulation.

Section 7. Information to be Included in Privacy Notices. (1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6, and 9 of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16 of this administrative regulation;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16 of this administrative regulation;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 of this administrative regulation, and no other exception in Sections 15 and 16 of this administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Section 11 of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16 of this administrative regulation, the licensee shall not be required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6 of this administrative regulation. If describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee shall satisfy the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and Social Security number;

b. Transaction information, such as information about balances, payment history and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not categorize the information that it discloses by using only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 of this administrative regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy the disclosure requirement of subsection (1)(e) of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of

this section, as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16 of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee shall not be required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt-out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Sections 5(1)(b) and 8(3) of this administrative regulation for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in Section 8 of this administrative regulation.

(b) A short-form initial notice shall:

1. Be clear and conspicuous;

2. State that the licensee's privacy notice is available upon request; and

3. Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10 of this administrative regulation. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10 of this administrative regulation.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Section 8. Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 11(1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

2. That the consumer has the right to opt out of that disclosure; and

3. A reasonable means by which the consumer may exercise the opt-out right.

(b)1. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee

discloses the information, as described in Section 7(1)(b) and (c) of this administrative regulation, and states that the consumer may opt out of the disclosure of that information; and

b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

b. Includes a reply form together with the opt-out notice;

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information; or

d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

b. The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5 of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 5 of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 10 of this administrative regulation.

Section 9. Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5 of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 14, 15, and 16 of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

Section 10. Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Illustrations of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;

2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

3. For a consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or

4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, post the notice and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely

by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Section 5(1)(a) of this administrative regulation, the annual notice required by Section 6(1) of this administrative regulation, and the revised notice required by Section 9 of this administrative regulation so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;
2. Mails a printed copy of the notice to the last known address of the customer; or
3. Makes its current privacy notice available on a Web site, or a link to another Web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5(1), 6(1), and 9 of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;
2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;
3. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
4. The consumer does not opt out.

(b) A licensee provides a consumer with a reasonable opportunity to opt out if:

1. By mail. The licensee mails the notices required in subsection (1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in subsection (1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee

shall not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 15 or 16 of this administrative regulation, the licensee's disclosure and use of that information shall be limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information pursuant to an exception in Section 15 or 16 of this administrative regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section 15 or 16 of this administrative regulation, the licensee may disclose the information only:

1. To the affiliates of the financial institution from which the licensee received the information;

2. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

3. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Section 15 or 16 of this administrative regulation:

1. The licensee may use that list for its own purposes; and

2. The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Section 15 or 16 of this administrative regulation, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section 15 or 16 of this administrative regulation, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section 15 or 16 of this administrative regulation, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 13. Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3)(a) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

Section 14. Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing. (1) General rule.

(a) The opt-out requirements in Sections 8 and 11 of this administrative regulation shall not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

1. Provides the initial notice in accordance with Section 5 of this administrative regulation; and

2. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out those purposes.

(b) If a licensee discloses nonpublic personal financial information under Section 14 to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution shall meet the requirements of Section 14(a)(2) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under subsection

(1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

Section 15. Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5(1)(b) of this administrative regulation, the opt out in Sections 8 and 11 of this administrative regulation, and service providers and joint marketing in Section 14 of this administrative regulation shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

Section 16. Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information. (1) Exceptions to opt-out requirements. The requirements for initial notice to consumers in Section 5(1)(b) of this administrative regulation, the opt out in Sections 8 and 11 of this administrative regulation, and service providers and joint marketing in Section 14 of this administrative regulation shall not apply if a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, if the consumer has not revoked the consent or direction;

(b)1. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

2. To protect against or prevent actual or potential fraud or unauthorized transactions;

3. For required institutional risk control or for resolving consumer disputes or inquiries;

4. To persons holding a legal or beneficial interest relating to the consumer; or

5. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 to 3422, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. 5311 to 5330, Records and Reports on Monetary Instruments and Transactions, and 12 U.S.C. 1951 to 1959, Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;

(e)1. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u; or

2. From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)1. To comply with federal, state or local laws, rules and other applicable legal requirements;

2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

4. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(2) Revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8(6) of this administrative regulation.

(3) Licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall be exempt from the notice provisions of this administrative regulation.

Section 17. Privacy Notices to Group Policyholders. Unless a licensee is providing privacy notices directly to covered individuals described in Section 5(1)(c), a licensee shall provide initial, annual, and revised notices to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 5 through 10 of this administrative regulation, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.

Section 18. When Authorization Required for Disclosure of Nonpublic Personal Health Information. (1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer about whom such information is sought to be disclosed.

(2) Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of such information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud; misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund function; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service function; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers' compensation policy or program; activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rule which is promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164; disclosure that is required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process.

(3) Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 19. Authorizations. (1) A valid authorization to disclose nonpublic personal health information pursuant to Section 18 shall be in written or electronic form and shall contain the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of information to be disclosed;

(c) General descriptions of the parties to whom disclosure shall be made, the purpose of the disclosure, and how the information will be used;

(d) The signature of the affected consumer or customer or the individual who is legally empowered to grant authority and the date signed;

(e) Notice of the length of time for which the authorization is valid, not to exceed twenty-four (24) months; and

(f) Notice that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) A consumer or customer who is subject of nonpublic personal health information may revoke an authorization provided pursuant to this section at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(3) A licensee shall retain the authorization or copy thereof in the record of the affected individual.

Section 20. Authorization Request Delivery. (1) A request for authorization and an authorization form may be delivered to a consumer or customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Section 18(1).

Section 21. Relationship to Federal Rules. Regardless of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act ("HIPAA") privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164, if a licensee complies with all requirements of 45 C.F.R. 160 to 164, the licensee shall not be subject to Sections 18, 19, and 20 of this administrative regulation.

Section 22. Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

Section 23. Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PVCY-01, "Sample Clauses and Examples (Edition 11/01)"; and

(b) Model Privacy Forms & General Instructions.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice that is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Executive Director" means the Commissioner of the Kentucky Office of Insurance.

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" means:

- (a) An individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or
- (b) That individual's legal representative.

(8) "Consumer reporting agency" is defined in 15 U.S.C. 1681a(f) of the federal Fair Credit Reporting Act.

(9) "Continuing relationship" means a relationship between a customer and a licensee if:

- (a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or
- (b) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(10) "Control" means:

- (a) Ownership, control, or power to vote twenty five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;
- (b) Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or
- (c) The power to exercise a controlling influence over the management or policies of the company.

(11) "Customer" means a consumer who has a customer relationship with a licensee.

(12) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(13) "Designed to call attention" means that the notice:

- (a) Uses a plain-language heading to call attention to the notice;
- (b) Uses a typeface and type size that are easy to read;
- (c) Provides wide margins and ample line spacing;
- (d) Uses boldface or italics for key words; and
- (e) Is in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(f) If a licensee provides a notice on an Internet Web page, "designed to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the Web site do not distract attention from the notice, and the licensee either:

- 1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- 2. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution" means any institution engaging in activities that are financial in nature or incidental to financial activities as described in 12 U.S.C. 1843(k).

(15) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in 12 U.S.C. 1843(k).

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Insurance product or service" means any product or service that is offered by a licensee, pursuant to KRS Chapter 304.

(18) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(19) "Licensee" means all insurers holding a certificate of

authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304.

(20) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

- (a) Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

- (b) Required, or is a usual, appropriate, or acceptable method:

- 1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

- 2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;

- 3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

- 4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

- 5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

- a. Account administration;

- b. Reporting;

- c. Investigating or preventing fraud or material misrepresentation;

- d. Processing premium payments;

- e. Processing insurance claims;

- f. Administering insurance benefits, such as utilization review activities;

- g. Participating in research projects; or

- h. As otherwise required or specifically permitted by federal or state law; or

- 6. In connection with:

- a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

- b. The transfer of receivables, accounts, or interests; or

- c. The audit of debit, credit, or other payment information.

(21) "Nonaffiliated third party" means any person who is not:

- (a) A licensee's affiliate; or

- (b) Employed jointly by a licensee and a company that is not the licensee's affiliate.

(22) "Nonpublic personal financial information" means:

- (a) Personally-identifiable financial information; and

- (b) Any list, description, or other grouping of consumers, and publicly-available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

(23) "Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16, and 17 of this administrative regulation.

(24) "Personally-identifiable financial information" means information:

- (a) That a consumer provides to a licensee to obtain an insurance product or service from the licensee;

- (b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

- (c) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.

(25) "Publicly-available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (a) Federal, state, or local government records;
- (b) Widely-distributed media; or
- (c) Disclosures to the general public that are required to be made by federal, state, or local law.

(26) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:

(a) That the information is the type that is available to the general public; and

(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(27) "Reasonably understandable" means a notice:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists, if possible;

(c) Uses definite, concrete, everyday words and active voice, if possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology, if possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

Section 2. This administrative regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance office. This administrative regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties;

(3) Provides methods for individuals to prevent a licensee from disclosing that information; and

(4) Applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

Section 3. A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of 15 U.S.C. 6801 to 6810 of the Gramm-Leach-Bliley Act may be deemed to be in compliance with 15 U.S.C. 6801 to 6810 of the Gramm-Leach-Bliley Act in such other state.

Section 4. The examples and sample clauses in the material incorporated by reference are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, shall constitute compliance with this administrative regulation.

Section 5. Requirements. (1) Consumer.

(a) A "consumer" shall include:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;

2. An applicant for insurance prior to the inception of insurance coverage;

3. An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, if:

a. The individual is a beneficiary of a life insurance policy underwritten by the licensee;

b. The individual is a claimant under an insurance policy issued by the licensee;

c. The individual is an insured or annuitant under an insurance

policy or an annuity issued by the licensee; or

d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.

(b) An individual shall not be a "consumer" solely on the basis that:

1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;

2. An individual is a beneficiary of a trust for which the licensee is a trustee;

3. An individual has designated the licensee as trustee for a trust; or

(c) An individual shall not be a "consumer" solely based on the status listed in subparagraph 2a through c of this paragraph, if:

1. The licensee provides the initial, annual, and revised notices under Sections 6, 7, and 10 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant; and

2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, about an individual who is:

a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensee; or

c. A beneficiary in a workers' compensation plan.

(d) The individuals described in paragraph (c)2a through c of this subsection shall be consumers of a licensee if the licensee fails to meet all the conditions of paragraph (c)1 and 2 of this subsection.

(2) Nonpublic personal financial information.

(a) "Nonpublic personal financial information" shall include any list of individuals' names and street addresses that is derived in whole or in part using personally-identifiable financial information that is not publicly available, such as account numbers.

(b) "Nonpublic personal financial information" shall not include:

1. Health information;

2. Publicly-available information, except as included on a list described in Section 1(22)(b) of this administrative regulation or paragraph (a) of this subsection; or

3. Any list, description, or other grouping of consumers and publicly-available information pertaining to them that is derived without using any personally-identifiable financial information that is not:

a. Publicly available, including any list of individuals' names and addresses that contains only publicly-available information;

b. Derived in whole or in part using personally-identifiable financial information that is not publicly available; and

c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(3) "Nonaffiliated third party" shall include:

(a) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 U.S.C. 1843(k)(4)(H) and (I) of the federal Bank Holding Company Act; and

(b) A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(4) "Financial institution" shall not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 U.S.C. 1 to 27f of the Commodity Exchange Act;

(b) The federal Agricultural Mortgage Corporation or any entity charged and operating under 12 U.S.C. 2001-2279cc of the Farm Credit Act of 1971; or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer

nonpublic personal information to a nonaffiliated third party.

(5) "Financial service" shall include a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(6) "Insurance service" shall include a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(7) Personally-identifiable financial information.

(a) "Personally-identifiable financial information" shall include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a Web server; and

7. Information from a consumer report.

(b) "Personally-identifiable financial information" shall not include:

1. Health information;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(8) Licensee.

(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, "the principal", and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.

(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this administrative regulation, except as permitted by Section 16 or 17 of this administrative regulation; and

2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:

"PRIVACY NOTICE – NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(d) A licensee shall not include registered service contract makers as defined in 806 KAR 5:060.

(9) Continuing relationship. A consumer shall not be deemed to have a continuing relationship with the licensee if:

(a) The consumer applies for insurance but does not purchase

the insurance;

(b) The licensee sells the consumer airline travel insurance in an isolated transaction;

(c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

(e) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) The individual's last known address according to the licensee's records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

Section 6. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17 of this administrative regulation.

(2) When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17 of this administrative regulation, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship:

(a) General rule. A licensee establishes a customer relationship when the licensee and the consumer enter into a continuing relationship.

(b) Establishing customer relationship examples are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(4) Existing customers. If an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 10 of this administrative regulation, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of

this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by subsection (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

1. Establishing the customer relationship is not at the customer's election; or

2. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section 8(4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 8(4)(c) of this administrative regulation.

Section 7. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) An example of an annual privacy notice is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(2)(a) Termination of customer relationship. A licensee shall not be required to provide an annual notice to a former customer.

(b) Examples of customer terminations are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(3) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 8. Information to be Included in Privacy Notices. (1)

General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 6, 7, and 10 of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 15 of this administrative regulation, and no other exception in Sections 16 and 17 of this administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Section 12 of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, notices regarding the ability to opt out of disclosures of information among affiliates;

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17 of this administrative regulation, the licensee shall not be required to list those exceptions in the initial or annual privacy notices required by Sections 6 and 7 of this administrative regulation. If describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee shall satisfy the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and Social Security number;

b. Transaction information, such as information about balances, payment history and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not categorize the information that it discloses by using only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 15 of this administrative

regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy the disclosure requirement of subsection (1)(e) of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17 of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee shall not be required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt-out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Sections 6(1)(b) and 9(3) of this administrative regulation for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in Section 9 of this administrative regulation.

(b) A short-form initial notice shall:

1. Be clear and conspicuous;

2. State that the licensee's privacy notice is available upon request; and

3. Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 11 of this administrative regulation. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 11 of this administrative regulation.

(d) Examples of obtaining privacy notice are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

Section 9. Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 12(1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a

nonaffiliated third party;

2. That the consumer has the right to opt out of that disclosure; and

3. A reasonable means by which the consumer may exercise the opt-out right.

(b)1. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 8(1)(b) and (c) of this administrative regulation, and states that the consumer may opt out of the disclosure of that information; and

b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

b. Includes a reply form together with the opt-out notice;

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information; or

d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

b. The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 6 of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 6 of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(e) Example of joint consumers opt out is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Time to comply with opt-out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 10. Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 6 of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 15, 16, and 17 of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 11. Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Illustrations of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;

2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

3. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or

4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers:

(a) For customers only, a licensee shall provide the initial notice required by Section 6(1)(a) of this administrative regulation, the annual notice required by Section 7(1) of this administrative regulation, and the revised notice required by Section 10 of this administrative regulation so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;

2. Mails a printed copy of the notice to the last known address of the customer; or

3. Makes its current privacy notice available on a Web site, or a link to another Web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 6(1), 7(1), and 10 of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 12. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;

2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;

3. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

4. The consumer does not opt out.

(b) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

1. By mail. The licensee mails the notices required in paragraph (a) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in

paragraph (a) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in paragraph (a) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee shall not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 16 or 17 of this administrative regulation, the licensee's disclosure and use of that information shall be limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section 16 or 17 of this administrative regulation, the licensee may disclose the information only:

1. To the affiliates of the financial institution from which the licensee received the information;

2. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

3. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Section 16 or 17 of this administrative regulation:

1. The licensee may use that list for its own purposes; and

2. The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee

received the list, as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Section 16 or 17 of this administrative regulation, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 14. Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, shall not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. A policy or transaction account shall be any account other than a deposit account or a credit card account. A policy or transaction account shall not include an account to which third parties cannot initiate charges.

Section 15. Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing. (1) General rule.

(a) The opt-out requirements in Sections 9 and 12 of this administrative regulation shall not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

1. Provides the initial notice in accordance with Section 6 of

this administrative regulation; and

2. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution shall meet the requirements of paragraph (a)2 of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

Section 16. Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 6(1)(b) of this administrative regulation, the opt out in Sections 9 and 12 of this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

Section 17. Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information. (1) Exceptions to opt-out requirements. The requirements for initial notice to consumers in Section 6(1)(b) of this administrative regulation, the opt out in Sections 9 and 12 of this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, if the consumer has not revoked the consent or direction;

(b)1. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

2. To protect against or prevent actual or potential fraud or unauthorized transactions;

3. For required institutional risk control or for resolving consumer disputes or inquiries;

4. To persons holding a legal or beneficial interest relating to the consumer; or

5. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to

Financial Privacy Act of 1978, 12 U.S.C. 3401 to 3422, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. 5311 to 5330, Records and Reports on Monetary Instruments and Transactions, and 12 U.S.C. 1951 to 1959, Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;

(e)1. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u; or

2. From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)1. To comply with federal, state or local laws, rules and other applicable legal requirements;

2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

4. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(2) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 9(6) of this administrative regulation.

(3) Licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall be exempt from the notice provisions of this administrative regulation.

Section 18. Protection of Fair Credit Reporting Act. This administrative regulation shall not be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u, and an inference shall not be drawn on the basis of the provisions of this administrative regulation regarding whether information is transaction or experience information under 15 U.S.C. 1681a of the Fair Credit Reporting Act.

Section 19. Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

Section 20. Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.

Section 21. Severability. If any section or portion of a section of this administrative regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this administrative regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 22. Effective Date. (1) Effective date. This administrative regulation is effective upon approval.

(2) Two (2) year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 15(1)(a)2 of this administrative regulation of this administrative regulation, even if the contract does not include a

~~requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.~~

~~Section 23. Incorporation by Reference. (1) The following material is incorporated by reference: PVCY-01, "Sample Clauses and Examples (Edition 11/01)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1523; Am. 1828; eff. 2-11-2002; TAm eff. 8-9-2007.)~~

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation accomplishes three primary objectives. First, in conjunction with the NAIC Model Rule No. 672 governing privacy standards for consumer financial and health information, the regulation incorporates the provisions of 806 KAR 3:220 (Privacy of Health Information) into this regulation, 806 KAR 3:210. The amendment simplifies the regulatory provisions and eliminates duplicative sections of two regulations. Second, this amendment adopts the December 4, 2015 amendments to the Gramm Leach Bliley Act to add an exception to the prior requirement to provide annual privacy notices to consumers. This exception will relieve many of Kentucky's regulated entities from the expensive burden of providing customers an annual privacy notice, which the Consumer Financial Protection Bureau has called wasteful because the notices are generally disregarded without being read. Third, the regulation largely adopts NAIC Model Rule No. 672 to provide uniformity for the Department's regulated entities operating in multiple jurisdictions and compliance burdens.

(b) The necessity of this administrative regulation: The amendment is necessary to bring Kentucky into conformity with the amendments to the Gramm Leach Bliley Act regarding the submission of annual privacy notices and the recently adopted changes to the NAIC Model Rule No. 672 on which this regulation was originally based. These amendments will relieve our regulated entities of the expensive burden of providing annual privacy notices in situations where they are wasteful and of little consumer benefit. Additionally, by combining the financial and health privacy regulations, the Department is eliminating unnecessarily

duplicative regulatory provisions to promote efficiency. Thus, the amendment will ease regulatory burdens on our regulated entities while maintaining the security and protection of consumer health and financial information.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commissioner is provided authority under KRS 304.2-110 to promulgate regulations necessary to effectuate provisions of the insurance code. KRS 304.2-105 allows the commissioner to extend by regulation the authority of insurance companies to act and perform functions similar to those federally regulated financial institutions. The Gramm Leach Bliley Act applies to regulate the actions of all financial institutions, including insurance companies. This regulation adopts those provisions and applies them to the licensed entities specified in KRS 304.2-105.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides clarity on the requirements in Kentucky regarding privacy policies and the submission of privacy notices to impacted consumers. Kentucky's regulation will conform to the federal requirements and recently adopted NAIC Model Rule No. 672 promoting an ease of compliance for our regulated entities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the provisions of 806 KAR 3:220 (Privacy of Health Information) to reduce duplicative restatements of definitions and other provisions. It also changes the annual privacy notice requirement by allowing an exception as permitted under the Gramm Leach Bliley Act, as amended. Lastly, the safe harbor for use of state specific sample clauses and examples is subject to a sunset provision due to the potential variations between states. Instead, as thoroughly discussed and recently adopted by the NAIC, the regulation incorporates the "Model Privacy Form." The use of this form will provide safe harbor for our regulated entities, and promote easier compliance through the adoption of a single, uniform standard in Kentucky and elsewhere.

(b) The necessity of the amendment to this administrative regulation: Based on the nationwide investigation performed by the Consumer Financial Protection Bureau as described in 79 Fed. Reg. 208, 64057 (October 28, 2014) and 81 Fed. Reg. 132, 44801 (July 11, 2016), annual privacy notice requirements like those in the prior version of this regulation, provide little benefit to consumers and in many cases overload consumers with unwanted mail. This amendment will relieve regulated entities of the burden to provide annual privacy notices, and bring Kentucky into conformity with the national standard. This amendment is necessary to remain consistent with the federal requirements and to reduce unduly burdensome and unnecessary compliance measures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms Kentucky's regulations to the authorizing statutes by allowing Kentucky's insurance companies and other regulated entities to be subject to the same requirements, and perform similar functions as federal financial institutions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by providing greater clarity for the Department through the reduction of duplicative provisions between multiple regulations, and incorporating the use of the federal form in line with the recently approved NAIC Model Rule No. 672.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended regulation affects all entities subject to KRS Chapter 304 licensed and authorized to perform insurance business within Kentucky. It affects policyholders who seek out or obtain insurance products and services from those entities pursuant to KRS Chapter 304.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The annual privacy notice exception included in this amendment relieves our regulated entities of the requirements to submit annual privacy notices in the event they satisfy certain conditions enumerated in the Gramm Leach Bliley Act §503(f), as amended on December 4, 2015. Insureds and policyholders will continue to receive adequate notification of the regulated entity's privacy policies, and will be informed of any changes under the requirement to provide revised privacy notices. However, they will not receive any unnecessary or unwanted mailings. The adoption of the "Model Privacy Form" may require some minimal administrative changes by our regulated entities. However, this form has been adopted by federal regulations and the recently adopted NAIC Model Rule No. 672. Thus, the form is the national standard for privacy notices, and will provide easier compliance for our regulated entities often subject to varied requirements across multiple states.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The "Federal Model Privacy Form" is already utilized. Therefore, no cost is anticipated to each of the regulated entities by the amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities that satisfy the elements for the annual notice exception will no longer be required to provide costly annual privacy notices. The Department anticipates this will result in significant annual savings to those regulated entities. For instance, one small insurer has indicated this change will achieve an annual savings of approximately \$50-60,000. The regulated entities will also benefit from the streamlined requirements and incorporation of the "Federal Model Privacy Form."

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost is anticipated in the implementation of this administrative regulation.

(b) On a continuing basis: No cost is anticipated in the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary for the implementation and enforcement of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation will apply to all regulated entities equally.

private information. Kentucky adopted the federal standards to promote uniformity and ease of compliance burdens.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter requirements except to state that regulated entities shall not discriminate to individuals who opt-out. This provision may already apply pursuant to the unfair trade practices law, but it was preserved to ensure clarity on this point.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Insurers are not permitted to discriminate against individuals who elect to opt-out of the disclosure of their non-public personal financial information to non-affiliated parties. This beneficial consumer protection measure prevents regulated entities from charging extra fees or denying products and services to consumers who simply assert their right to opt-out.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, 12 C.F.R. 1016 (Regulation P), KRS 304.2-110, 304.2-105, 304.2-110.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There is no cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, 12 C.F.R. 1016 (Regulation P).

2. State compliance standards. Kentucky's compliance standards mirror the federal requirements. The amendments now include both the federal exception to the annual privacy notice requirement and the "Model Privacy Form." The Department has preserved the "nondiscrimination" provision in Kentucky, which prevents entities from discriminating against those individuals who choose to opt-out of their disclosure provisions.

3. Minimum or uniform standards contained in the federal mandate. This federal mandate stipulates the requirements for the collection and disclosure of nonpublic personal financial information by insurance companies, the privacy notices provided by such entities to their consumers and customers, and the ability of consumers and customers to opt-out of the disclosure of their

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2017-2019[Update to the 2015-2017] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2017-2019[Update to the 2015-2017] State Health Plan", July[January] 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL A. COOMES, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, Deputy General Counsel, Office of Legal Services, phone 502-564-7905, email molly.lewis@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: The amendment incorporates by reference the 2017-2019 State Health Plan. Substantive changes include deletion of the common review criteria; revisions to the special care neonatal beds criteria to allow conversions between Level II and Level III NICU beds and to allow a hospital with 800 births to establish a Level II program; nursing facility criteria were revised to allow transfer/relocation of nursing facility beds within the same county, to a contiguous county, or to a county within the ADD, to delete the criterion regarding alleviation of an emergency circumstance, to allow for the establishment of nursing home beds for the provision of post-acute rehabilitation services, and to delete the requirement for a facility proposing to transfer beds to participate in the Cabinet's National Background Check Programs; home health agency review criteria were revised to delete the exemption criterion for accountable care organizations (ACOs) and to delete the requirement for Home Health applicants to participate in the Cabinet's National Background Check Program; cardiac catheterization review criteria were revised to delete the criteria regarding the cardiac catheterization pilot program for therapeutic catheterization programs without open heart surgery backup, and to establish review criteria for therapeutic catheterization programs to project 200 annual procedures and 50 procedures per interventional cardiologist by the second year of operation; the private duty nursing service definition was revised and the requirement for the applicant to participate in the Cabinet's National Background Check Program was deleted.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the State Health Plan, which is used to determine whether certificate of need applications are consistent with the State Health Plan.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by incorporating by reference the 2017-2019 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the 2017-2019 State Health Plan which will be used to determine whether certificate of need applications are consistent with the State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit certificate of need applications will be subject to the criteria set forth in the 2017-2019 State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that submit certificate of need applications will be subject to the revised criteria set forth in the 2017-2019 State Health Plan.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is used as there are different CON review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Health Policy and may impact any government owned or controlled health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:360. Abortion facilities.

RELATES TO: KRS Chapter 13B, 15.241, 213.101, 216B.010-216B.130, 216B.990, 311.710-311.830, 314.011(8), 314.042(8), Chapter 333, 29 C.F.R. 1910.1030, 40 C.F.R. Part 403, 42 C.F.R. Part 493

STATUTORY AUTHORITY: KRS 216B.0431

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.0431 requires that the Cabinet for Health and Family Services regulate abortion facilities. This administrative regulation establishes the licensure requirements for abortion facilities.

Section 1. Definitions. (1) "Abortion" is defined by[in] KRS 311.720(1).

(2) "Abortion facility" is defined by[in] KRS 216B.015(1).

(3) "Cabinet" is defined by KRS 216B.015(6)[means—the Cabinet for Health Services].

(4) "Volunteer" means a person who is not an employee of the abortion facility, but[and—who] has direct patient health care

responsibilities performed within the abortion facility, and excludes any individual whose only duties include ushering patients into the facility [escort services].

Section 2. Licenses. (1) A license to operate an abortion facility shall not be required for a health facility licensed in accordance with [to perform the services regulated by] 902 KAR 20:016 or 902 KAR 20:106.

(2) A Kentucky-licensed acute-care hospital or ambulatory surgical center[That health facility] shall:

(a) Comply with the requirements of its respective licensure category and provide written notice of its intent to perform abortions to the Office of Inspector General, Division of Health Care[Licensing and Regulation], 275 East Main Street, Frankfort, Kentucky 40621;

(b) Comply with the reporting requirements of KRS 216B.0431; and

(c) Be exempt from any other licensure requirements of this administrative regulation.

(3) An abortion facility[(2)—The] license required by KRS 216B.0431 shall be conspicuously posted in a public area of the facility.

(4)[(3)] An applicant for licensure shall file with the Office of the Inspector General, Division of Health Care[Licensing and Regulation], 275 East Main Street, Frankfort, Kentucky 40621, an Application for License to Operate an Abortion Facility.

(5)[(4)] An applicant for a license shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable federal and state laws and administrative regulations relating to an abortion facility and the requirements established in this subsection.[:]

(a) Compliance with licensure administrative regulations shall be ascertained through an on-site inspection of the facility. A licensure inspection may be unannounced.

(b) A representative of the Office of Inspector General[inspecting agency] shall have access to the facility during the hours that the facility operates.

(c) A regulatory violation identified during an inspection shall be transmitted in writing to the facility by the Office of Inspector General [inspecting agency].

(d) The facility shall submit a written plan for the elimination or correction of the regulatory violation to the Office of Inspector General [inspecting agency] within ten (10) calendar days.

1. The plan shall specify the date by which each violation shall be corrected.

2. Following a review of the plan, the Office of Inspector General [inspecting agency] shall notify the facility in writing of the acceptability of the plan.

3. If a portion or all of the plan is unacceptable:

a. The Office of Inspector General [inspecting agency] shall specify the reasons for the unacceptability; and

b. The facility shall modify or amend the plan and resubmit it to the Office of Inspector General [inspecting agency] within ten (10) calendar days.

(6)[(5)] A licensee shall, as a condition of licensure or relicensure, be in compliance with the reporting requirements of KRS 213.101.

(7)[(6)] An unannounced inspection shall be conducted:

(a) On a complaint allegation; and

(b) Utilizing the procedures established in subsection (5)[(3)] of this section.

(8)[(7)] A license shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(9)[(8)] A license shall be renewed upon payment of the prescribed fee and compliance with the licensure administrative regulations.

(10)[(9)] Each license to operate shall be issued for the person or entity[persons] and premises named in the application.

(11)[(10)] A new application shall be filed if there is[in the event of] change of ownership as established by 902 KAR 20:008, Section 2(16).

(a) Upon the filing of a new application for a license because of

change of ownership, the new license shall be automatically issued for the remainder of the current licensure period.

(b) An additional fee shall not be charged for the remainder of the licensure period.

Section 3. Fee Schedule. (1) Annual fees. The annual licensure fee (including a renewal) for abortion facilities shall be \$155 for each licensed facility.

(2) Fees shall be paid by check made payable to Kentucky State Treasurer and sent to Cabinet for Health and Family Services, Division of Health Care[Licensing and Regulation], 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

Section 4. Appeals. (1) Notice of the denial, suspension, or revocation of a license, or application for a provisional license, or denial or rescission of a request for extension as set forth in Section 10(5) of this administrative regulation shall be made pursuant to the provisions of KRS Chapter 13B.

(2) A licensee may appeal the denial, suspension, or revocation of the facility's[his] license or its application for a provisional license to the Secretary of the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) A hearing on the denial, suspension, or revocation of a license shall be conducted pursuant to the provisions of KRS Chapter 13B.

Section 5. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the abortion facility and for compliance with federal, state, and local laws and regulations pertaining to the operation of the abortion facility.

(b) The licensee shall establish written policies for the administration and operation of the abortion facility.

(c) The licensee shall establish lines of authority and designate the staff person who shall be principally responsible for the daily operation of the abortion facility.

(2) Policies.

(a) Administrative policies. The abortion facility shall have written administrative policies covering all aspects of the operation, including:

1. A description of organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the program;

5. A description of the administrative and patient care records and reports;

6. Procedures to be followed in the storage, handling, and administration of drugs and biologicals;[and]

7. A policy to specify the provision of emergency medical services; and[.]

8. Procedures to be followed in obtaining the voluntary and informed written consent of the pregnant woman[.] as required by KRS 311.725 prior to performing an obstetric ultrasound in accordance with KRS 311.727.

(b) Patient rights policies. The abortion facility shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of a procedure for handling patient grievances;[.]

2. Is informed of services available at the abortion facility and of related charges, including any charges not covered under third-party payor arrangements;[.]

3. Is informed of her medical condition, unless medically contraindicated (as documented in her medical record), and is afforded the opportunity to participate in the planning of her medical treatment and to refuse to participate in experimental research;[.]

4. Is encouraged and assisted to understand and exercise her patient rights;[.] To this end, she may voice grievances and recommend changes in policies and services. Upon the patient's request, the grievances and recommendations shall[will] be

conveyed within a reasonable time to an appropriate decision making level within the organization that[which] has authority to take corrective action;[.]

5. Is assured confidential treatment of her records and is afforded the opportunity to approve or refuse the[their] release of her records to any individual not involved in her care, except as required by Kentucky law or third-party payment contract; and[.]

6. Is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in the care of her personal health needs.

(3) Personnel.

(a) A facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.

1. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.

2. Prior to performing job duties, all employees and volunteers who have direct patient contact within the abortion facility[.] shall have tuberculin[skin] testing conducted in accordance with 902 KAR 20:205.

~~3. Unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux) method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees or volunteers who have no documentation of a negative PPD result during the preceding twelve (12) months, then the two (2) step procedure (one (1) PPD test with negative result followed one (1) to three (3) weeks later by another PPD test) is required to establish a reliable baseline. If employees or volunteers have complete documentation of a negative PPD during the preceding twelve (12) months (may be a single PPD or a two (2) step PPD), then a single PPD is acceptable to establish the baseline for current employment.~~

~~a. A person with negative tuberculin skin tests who has direct contact with patients shall have an annual tuberculin skin test.~~

~~b. An initial or routine chest x-ray shall not be required for an employee or volunteer with negative tuberculin test results who is asymptomatic.~~

~~c. Personnel with a positive reaction to the skin test shall have no patient contact until certified noncontagious by a physician.~~

~~d. A chest x-ray shall be required to determine whether TB disease is present for an employee or volunteer:~~

~~(i) With reactions of 10mm and over to the preemployment tuberculin test;~~

~~(ii) Who has previously documented positive reactions;~~

~~(iii) With newly converted skin tests; and~~

~~(iv) With symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.)~~

~~e. If TB disease is diagnosed, appropriate treatment shall be given and patient contacts examined.~~

~~f. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and shall not be allowed to return to work until they have been certified noncontagious by the physician.~~

~~g. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees or volunteers who have patient contact, unless specifically contraindicated.~~

~~(i) An employee or volunteer who completes treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless he has symptoms of TB.~~

~~(ii) Positive reactors who are unable or unwilling to take preventive treatment shall not receive an annual chest x-ray. These individuals shall be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.~~

~~h. Postexposure skin tests shall be provided for tuberculin negative employees or volunteers within twelve (12) weeks after termination of contact for any suspected exposure to a~~

~~documented case of pulmonary TB.~~ i.] A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

4.[3.] All professional and allied health professional staff members shall be currently certified with American Red Cross,~~or~~ American Heart Association, or an equivalent nationally recognized organization to perform cardiopulmonary resuscitation and capable of recognizing symptoms of distress.

5. ~~An~~[4. ~~No~~] employee or volunteer of the facility while afflicted with any infected wounds, boils, sores, or an acute respiratory infection~~;~~ or any other contagious disease or illness~~;~~ shall not work in any capacity in which there is a likelihood of ~~that~~[such] person transmitting disease to other individuals.

6.[5.] Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, including:

a.~~[to include]~~ Fire safety and other safety measures;

b.~~;~~ Medical emergencies;

c.~~;~~ and Infection control; and

d. Confidentiality of patient information and records.

7.[6.] In-service training programs shall be planned and provided for all employees and volunteers to ensure and maintain their understanding of their duties and responsibilities.

8. Records shall be maintained to reflect in-service training program content and individual attendance.

9. The following training shall be provided at least annually:

a. Infection control, to include as a minimum;

~~(i);~~ Universal precautions against blood-borne diseases;

~~(ii);~~ General sanitation; and

~~(iii);~~ Personal hygiene such as hand washing, use of masks and gloves, and instruction to staff if there is a likelihood of transmitting a disease to patients or other staff members;

b. Fire protection, including:

~~(i) [to include]~~ Evacuating patients;

~~(ii);~~ Proper use of fire extinguishers~~;~~ and

~~(iii)~~ Procedures for reporting fires;

c. Confidentiality of patient information and records, and protecting patient rights; and

d. Licensing regulations.

10.[7.] Job descriptions.

a. Written job descriptions that adequately describe the duties of every position shall be maintained.

b. Each job description shall include:

~~(i)~~ Position title;

~~(ii);~~ Authority;

~~(iii);~~ Specific responsibilities; and

~~(iv)~~ Minimum qualifications.

c. Job descriptions shall be:

~~(i)~~ Reviewed at least annually;

~~(ii);~~ Kept current; and

~~(iii)~~ Given to each employee and volunteer~~when~~ assigned to the position, including any~~and when~~ revised job descriptions.

11.[8.] A personnel file shall be maintained for each employee and for each volunteer as follows:

a.~~;~~ The records shall be:

~~(i)~~ Completely and accurately documented; and

~~(ii);~~ Readily available~~;~~ and systematically organized to facilitate the compilation and retrieval of information; and

b.~~;~~ The file shall contain:

~~(i)~~ A current job description that reflects the individual's responsibilities and work assignments~~;~~ and

~~(ii)~~ Documentation of the individual's~~person's~~ orientation, in-service education, appropriate licensure, if applicable, and TB~~skin~~ testing.

(b) Clinical staff.

1. Physicians, nurses, and allied health professionals shall constitute the clinical staff.

2. The clinical staff shall meet at least quarterly to review and analyze their clinical experiences~~;~~ Minutes shall be maintained of the ~~[such]~~ meetings.

3. Physicians.

a. Abortions shall be performed only by a physician who is:

~~(i)~~ Licensed to practice medicine in Kentucky; and

~~(ii)[who is]~~ Properly qualified by training and experience to perform pregnancy termination procedures.

b. A physician shall remain on the premises until all patients are discharged.

(c) Nursing.

1. Nursing care shall be under the supervision of a registered nurse currently licensed in Kentucky.

2. A registered nurse shall be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period, and until all patients leave the facility.

3. Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.

(d) Allied health professionals, working under appropriate direction and supervision, may be employed to work only within areas where their competency has been established.

Section 6. Patient Care. (1) An abortion facility~~[facilities]~~ shall not serve patients whose needs exceed the resources or capabilities of the facility.

(2) The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, including the following~~[to include]~~:

~~(a)[(1)]~~ Admission criteria;

~~(b)[(2)]~~ Physician and nurse responsibilities for the services offered;

~~(c)[(3)]~~ Specific details regarding the preoperative procedures performed, to include history and physical examination, including:

1. Verification of pregnancy;

2.~~;~~ Estimation of gestational age;

3.~~;~~ Identification of any preexisting conditions or complications; and

4. An obstetric ultrasound as required by KRS 311.727;

~~(d)[(4)]~~ The actual abortion procedure, to include the use of:

1.~~;~~~~(a)~~ IVs;

2.~~;~~~~(b)~~ Fluids;

3.~~;~~~~(c)~~ Analgesia or~~[/]~~ anesthesia. General anesthesia shall be administered only by personnel acting within the limits of their statutory scope of practice; and

4.~~;~~~~(d)~~ Tissue examination and disposal;

~~(e)[(5)]~~ Postprocedure care and recovery room procedures to include emergency care;

~~(f)[(6)]~~ Provisions for the education of patient, family, and others, as appropriate in pre- and postprocedure care;

~~(g)[(7)]~~ Plans for follow-up patient care after discharge from the facility;

~~(h)[(8)]~~ Management and appropriate referral of high-risk conditions;

~~(i)[(9)]~~ Transfer of patients who, during the course of pregnancy termination, are determined to need care beyond that of the facility; and

~~(j)[(10)]~~ Infection control and sanitation procedures, including~~[to include]~~ duties and responsibilities of the infection control committee. The infection control committee~~[that]~~ shall develop and implement~~[include the development and implementation of]~~ specific patient care and administrative policies aimed at investigating, controlling, and preventing infections in the facility.

Section 7. Pharmaceutical Services. Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state, and local laws. (1) Emergency drugs~~;~~

(a) Emergency kit or emergency drugs~~;~~ Each facility shall maintain an emergency kit or stock supply of drugs and medicines for use in treating the emergency needs of patients in compliance with the requirements of this paragraph.

1. The emergency~~[This]~~ kit or stock supply of drugs and medicine shall be stored in such a manner as to prohibit its access by unauthorized personnel.

2. A listing of contents by drawer or shelf shall be placed on the cabinet or emergency cart to allow quick retrieval.

3. Contents shall correspond with the inventory list.

4. Drugs and equipment shall be available within the facility to

treat, as a minimum, the following conditions:

- a.[1.] Cardiac arrest;
- b.[2.] Seizure;
- c.[3.] Asthmatic attack;
- d.[4.] Allergic reaction;
- e.[5.] Narcotic toxicity;
- f.[6.] Hypovolemic shock; or
- g.[7.] Vasovagal shock.

(b) Drug Reference Sources. Each facility shall maintain reference sources for identifying and describing drugs and medicines.

(2) Administering drugs and medicines.

(a) Drugs and medicines shall not be administered to individual patients or to anyone within or outside the facility except by those authorized by law under orders of a physician or other ordering personnel acting within the limits of his or her[their] statutory scope of practice.

(b) ~~The~~[Such] orders shall be in writing and signed personally by the physician or other personnel who prescribes the drug or medicine.

(3) Medicine storage.

(a) Medicines and drugs maintained in the facility for daily administration shall not be expired and shall be properly stored and safeguarded in enclosures of sufficient size that are not accessible to unauthorized persons.

(b) Refrigerators used for storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications.

(c) A thermometer accurate to \pm three (3) degrees Fahrenheit shall be maintained in these refrigerators.

(d) Only authorized personnel shall have access to storage enclosures.

(e) Controlled substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws.

(4) Medicine preparation area.

(a) Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink.

(b) This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.

(5) Records. Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered.

(6) Poisonous substances. All poisonous substances shall be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration.

Section 8. Laboratory Services. (1) Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under 42 C.F.R. Part[CFR] 493.

(a) Facilities for collecting specimens shall be available on site.

(b) If laboratory services are provided on site, the services[they] shall be:

- 1. Directed by a person who qualifies as a director under KRS 333.090 and 42 C.F.R.[CFR] Part 493; and
- 2.[shall be] Performed in compliance with KRS Chapter 333 and 42 C.F.R. Part[CFR] 493 standards.

(2) Prior to the procedure, laboratory tests shall include a recognized urine pregnancy test unless the physician identifies fetal heart beats or fetal movements on physical examination. If positive, the following additional tests shall be[are] required:

- (a) Urinalysis including albumin and glucose examination;
- (b) Hematocrit or hemoglobin; and
- (c) Determination of Rh factor with appropriate medical intervention.

(3)(a) Aspirated tissues shall be examined to verify that villi or fetal parts are present.

(b)[i:] If villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.

(4) A written report of each laboratory test and examination shall be a part of the patient's record.

(5) If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she shall be administered fluids and transported immediately to a Kentucky-licensed[an] acute care hospital.

(6) All laboratory supplies shall be monitored for expiration dates, if applicable.

Section 9. Medical Waste Disposal. (1) Sharp wastes.

(a) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(b) A needle or other contaminated sharp[Needles] shall not be recapped, purposely bent,[or] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container[The containers of sharp wastes] shall~~either~~ be incinerated on or off site, or be rendered nonhazardous.

(2) Disposable waste.

(a) All disposable waste shall be:

- 1. Placed in a suitable bag[bags] or closed container[containers] so as to prevent leakage or spillage;; and
- 2. ~~shall be~~ Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b) The abortion facility shall establish specific written policies regarding handling and disposal of waste material[all wastes].

(c) Pathological waste, such as tissues, organs, body parts, and bodily fluids, shall be incinerated.

(d) Blood, blood specimens, used blood tubes, or blood products[The following wastes] shall be:

- 1. Disposed of by incineration;
- 2.; ~~or be~~ Autoclaved before disposal;; or
- 3.~~be~~ Carefully poured down a drain connected to sanitary sewer, subject to limitations in paragraph (e) of this subsection[: blood, blood specimens, used blood tubes, or blood products].

(e) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. 403 and relevant local ordinances[administrative regulations].

(f) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:023 or 401 KAR 61:013.

Section 10. Emergency Care. (1) As required by KRS 216B.0435, an abortion facility shall enter into a written agreement [agreements] with a Kentucky-licensed acute-care hospital and a local, Kentucky-licensed Class I ambulance service for the transport and treatment of a patient with unforeseen complications related to an abortion facility procedure[patients when hospitalization becomes necessary, as required by KRS 216B.0435].

(2) Each[These] written agreement[agreements] shall be filed with the cabinet pursuant to KRS 216B.0435(4) within ten (10) calendar days of finalization.

(3) A transfer agreement between the abortion facility and a Kentucky-licensed acute-care hospital shall:

(a) Be with a hospital located:

- 1. In the same county as the abortion facility; or
- 2. No further than twenty (20) minutes normal driving time from the abortion facility;

(b) Be a legally binding contractual document;

(c) Be signed by individuals authorized to execute the agreement on behalf of the abortion facility and hospital, who shall certify they have such authority;

(d) Require transfer of a patient if deemed medically necessary by the physician attending to the patient;

(e) Identify responsibilities of the abortion facility in which the abortion facility shall, at a minimum:

- 1. At the time of transfer, provide the hospital with complete and accurate information regarding the patient being transferred to the hospital;
- 2. Notify the hospital of the impending transfer of a patient and

receive confirmation of the availability of appropriate facilities, services, and staff necessary for the care of the patient;

3. At the time of transfer, provide the hospital with copies of relevant portions of the patient's clinical record;

4. Transfer with the patient, the patient's medical records, demographic information, insurance information, and other information deemed necessary or otherwise required by law to facilitate the provision of medical care when the patient arrives at the hospital; and

5. Arrange for the immediate transfer of the patient's personal effects, including a document listing of the effects; and

(f) Identify responsibilities of the hospital in which the hospital shall, at a minimum:

1. Provide prompt and appropriate evaluation and treatment of a patient transferred to the hospital pursuant to the transfer agreement;

2. Accept responsibility for the patient's care when the patient is received by the hospital;

3. Direct charges performed by the hospital to the patient or patient's third-party payer; and

4. Acknowledge receipt of the patient's personal effects in writing signed by an authorized representative of the hospital and deliver the receipt to the abortion facility.

(4) A transport agreement between the abortion facility and a Kentucky-licensed Class I ambulance service capable of responding immediately to a call for emergency transport shall:

(a) Be with an ambulance service located:

1. In the same county as the abortion facility; or

2. No further than five (5) miles or ten (10) minutes normal driving time from the abortion facility;

(b) Be signed by individuals authorized to execute the agreement on behalf of the abortion facility and ambulance service, who shall certify they have such authority; and

(c) Identify responsibilities of the ambulance service in which the ambulance service shall agree, at a minimum to:

1. Provide services in accordance with all federal and state laws and administrative regulations applicable to emergency service entities;

2. Employ sufficient staff, including paramedics and emergency medical technicians, to provide patient care and operate vehicles and equipment in accordance with industry standards and applicable laws and administrative regulations;

3. Require all responding medical personnel to familiarize themselves with the floor plan of the abortion facility to minimize the time required to locate the patient in the facility and exit the facility with the patient as expeditiously as possible;

4. Acknowledge the existence of, and its familiarity with the terms of, the transfer agreement between the abortion facility and an acute care hospital; and

5. Transport the patient to the hospital that is party to the transfer agreement, unless otherwise directed by the patient.

(5) A licensed abortion facility applying for a renewal license or an applicant for a provisional license may submit a request in writing for extensions of time to comply with the transfer or transport agreement requirements to the cabinet's Office of Inspector General in accordance with the provisions of this subsection.

(a) Any request shall:

1. Be in writing;

2. Contain a certification under oath that the party seeking the extension of time has exhausted all reasonable efforts to obtain a transfer or transport agreement for a continuous ninety (90) calendar day period prior to the request; and

3. Contain a detailed description of the efforts taken to secure the agreements.

(b) In deciding to grant or deny the request for an extension of time, the inspector general shall consider all factors the inspector general deems relevant under the circumstances, but at least the following factors:

1. Whether the abortion facility or applicant made, and continues to make, a good faith effort to obtain a transfer or transport agreement;

2. Whether the abortion facility or applicant can provide the

same level of patient care and safety via alternative health services during any extension period; and

3. Regulatory compliance history at the abortion facility and at any other health care facility owned, in whole or in part, by the applicant or any other individual or entity having an ownership interest with the facility.

(c) If the request is granted, the extension of time shall be effective for a time-period of ninety (90) calendar days from the date of issuance.

(d) If the request is granted for a transfer agreement, the transport agreement need not comply with subsection (4)(c)4. and 5. of this section for the duration of the extension of time.

(e) The inspector general may rescind a previously granted extension of time at any time upon determining that the applicant or abortion facility has not met, or is not meeting, the conditions of paragraph (b) of this subsection.

(f) If a request for an extension is denied, an applicant or licensee shall have ten (10) calendar days to submit a written request for reconsideration to the inspector general, whose decision shall be final. The licensee or applicant for provisional license may appeal a denial in accordance with Section 4 of this administrative regulation.

Section 11. Equipment and Supplies. There shall be appropriate equipment and supplies maintained for the patients to include:

(1) A bed or recliner suitable for recovery;

(2) Oxygen with flow meters and masks or equivalent;

(3) Mechanical suction;

(4) Resuscitation equipment to include resuscitation bags and oral airways;

(5) Emergency medications, intravenous fluids, and related supplies and equipment;

(6) A clock with a sweep second hand;

(7) Sterile suturing equipment and supplies;

(8) Adjustable examination light;

(9) Containers for soiled linen and waste materials with covers;

(10) Refrigerator; and

(11) Appropriate equipment for the administering of general anesthesia, if applicable.

Section 12. Consultation. Arrangements shall be made for consultation or referral services to be available as needed.

Section 13. Quality Improvement. (1)The facility shall establish and implement a written plan for a quality improvement program for patient care that shall:

(a)[~~The plan shall~~] Specify the individual responsible for coordinating the quality improvement program; and

(b) [shall] Provide for ongoing monitoring of staff and patient care services.

(2) There shall be an ongoing process for monitoring and evaluating the following:

(a) Patient care services;

(b)[~~;~~] Staffing;

(c)[~~;~~] Infection prevention and control;

(d)[~~;~~] Housekeeping;

(e)[~~;~~] Sanitation;

(f)[~~;~~] Safety;

(g)[~~;~~] Maintenance of physical plant and equipment;

(h)[~~;~~] Patient care statistics[~~;~~] and

(i) Discharge planning services.

(3) Evaluation of patient care throughout the facility shall be criteria-based[~~;~~] so that certain actions shall be[are] taken or triggered if[when] specific quantified, predetermined levels of outcomes or potential problems are identified.

(4) The quality improvement process shall incorporate quarterly review of a minimum of five (5) percent of medical records of patients undergoing procedures during a given quarter, but not less than five (5) records shall be reviewed.

(5)(a) The quality improvement process shall include evaluation by patients of care and services provided by the facility.

(b) If the families of patients are involved in the care and

services provided by the facility, the quality improvement process shall include a means for obtaining input from families of patients.

(6) The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including as a minimum:

- (a) Policy revisions;
- (b) Procedural changes;
- (c) Educational activities; and

(d) Follow-up on recommendations, which may include~~or~~ that additional actions are no longer indicated or needed.

(7) The quality improvement program shall identify and establish indicators of quality care~~;~~ specific to the facility~~;~~ that shall be monitored and evaluated.

(8) The results of the quality improvement program shall:

(a) Be submitted to the licensee for review at least annually; and
(b) ~~shall~~ Include at least the deficiencies found and recommendations for corrections or improvements.

(9) Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

Section 14. Medical Records. (1) Medical records shall be maintained for all patients examined or treated in the abortion facility.

(2) The medical records shall be:

- (a) Completely and accurately documented~~;~~;
- (b) Readily available~~;~~;
- (c) Systematically organized to facilitate the compilation and retrieval of information.

(3) All information shall be centralized in the patient's medical record.

(4) All entries shall be legibly written or typed, dated, and signed.

(5) ~~(a)~~ The medical record shall include the following information:

(a) ~~1-~~ A face sheet with patient identification data, including:

- 1. ~~to include:~~ Name;
- 2. Address;
- 3. Telephone number;
- 4. Social Security number;
- 5. Date of birth~~;~~ and

6. Name, address and telephone number of the person to be notified ~~if in the event of~~ an emergency occurs;

(b) ~~2-~~ Signed consent for the procedure;

(c) ~~3-~~ Date of initial examination;

(d) ~~4-~~ Date of abortion;

(e) ~~5-~~ Referring and attending physicians' names and phone numbers, if applicable;

(f) ~~6-~~ Complete medical history to include medications currently being taken;

(g) ~~7-~~ Physical examination, to the extent necessary to determine the health status of the patient, within fifteen (15) days of the procedure, including detail of findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period;

(h) ~~8-~~ Results of diagnostic tests and examinations, including:

- 1. ~~e.g.;~~ X-ray;
- 2. Electrocardiography;
- 3. Clinical laboratory;
- 4. Pathology;
- 5. Consultations; or
- 6. Ultrasound;

(i) ~~9-~~ Preoperative diagnosis;

(j) ~~10-~~ Counselor's notes, if applicable;

(k) ~~11-~~ Physician's orders;

(l) ~~12-~~ Complete record of abortion procedure to include:

1. ~~a.~~ Vital signs, including ~~the~~ temperature, pulse, respiration, and blood pressure~~;~~ prior to and following the procedure;

2. ~~b.~~ Name of procedure performed;

3. ~~c.~~ Anesthetic agent utilized;

4. ~~d.~~ Name of attending physician performing the procedure;

5. ~~e.~~ Names of clinical assistants in attendance, including:

- a. ~~to include~~ Other physicians;
- b. Physician's assistants;
- c. Anesthetists;

d. ~~;~~ Nurses~~;~~ or

e. Specially-trained technicians; and

f. Signature of physician performing the procedure;

(m) ~~43-~~ Nurses' notes;

(n) ~~44-~~ Progress notes to include a postanesthesia note if general anesthesia is utilized;

(o) ~~45-~~ Attending physician's description of gross appearance of tissue removed;

(p) ~~46-~~ Final diagnosis;

(q) ~~47-~~ Condition on discharge;

(r) ~~48-~~ Post-op orders and follow-up care; and

(s) ~~49-~~ Documented verification that the woman has received information and was offered printed materials as required by KRS 311.725.

(6) ~~(b)~~ The attending physician shall complete and sign the medical record within seventy-two (72) hours following discharge.

(7) ~~(2)~~ Confidentiality of all patient records shall be maintained at all times.

(8) ~~(3)~~ Transfer of records. The abortion facility shall:

(a) Establish systematic procedures to assist in continuity of care ~~if where~~ the patient moves to another source of care~~;~~ and

(b) ~~shall~~ Upon proper release, transfer medical records or an abstract thereof ~~if when~~ requested.

(9) ~~(4)~~ Retention of records. After patient's death or discharge, the complete medical record shall be placed in an inactive file and retained for six (6) ~~five (5)~~ years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 15. Infection Control. (1) There shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be:

- (a) Established;
- (b) ~~;~~ Reviewed at least annually~~;~~ and
- (c) Revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among patients ~~residents~~ and personnel.

(4) The system shall include assignment of responsibility for:

- (a) The ongoing collection and analysis of data; and
- (b) ~~as well as for~~ The implementation of required follow-up actions.

(5) Corrective actions shall be:

(a) Taken on the basis of records and reports of infections and infection potentials among patients and personnel; and

(b) ~~shall be~~ Documented.

(6) All new employees shall be instructed on:

(a) ~~in~~ The importance of infection control and personal hygiene; and

(b) ~~in~~ Their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

(8) Adequate space shall be provided for storage, maintenance, and distribution of sterile supplies and equipment.

(9) Sterile supplies and equipment shall:

- (a) Not be mixed with unsterile supplies;
- (b) ~~and shall~~ Be stored in dust-proof and moisture-free units;

and
(c) ~~They shall~~ Be properly labeled.

(10) Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials.

(11) The sterilizing equipment shall have approved control and safety features.

Section 16. Linen and Laundry. (1) An adequate supply of clean linen or disposable materials shall be maintained~~in order~~ to ensure a change of linen on procedure tables between patients.

(2) Provisions for proper laundering of linen and washable goods shall be made.

(3) Soiled and clean linen shall be handled and stored separately.

(4) Storage shall be in covered containers.

(5)(3) A sufficient supply of cloth or disposable towels shall be available so that a fresh towel is~~can be~~ used after each hand washing.

(6) Towels shall not be shared.

Section 17. Housekeeping. (1)~~General. (a)~~ A facility shall be kept neat, clean, and free from odors.

(2)~~(b)~~ Accumulated waste material shall be removed daily or more often if necessary.

(3)~~(c)~~ There shall be frequent cleaning of floors, walls, ceilings, woodwork, and windows.

(4)~~(d)~~ The premises shall be kept free from rodent and insect infestation.

(5)~~(e)~~ Bath and toilet facilities shall be maintained in a clean and sanitary condition at all times.

(6)(2) Cleaning materials and supplies shall be stored in a safe manner.

(7) All harmful agents shall be locked in a closet or cabinet used for this purpose only.

Section 18. Refuse and Waste Disposal. (1) All garbage and waste shall be collected, stored, and disposed of in a manner designed to prevent the transmission of disease.

(2)(a) Containers shall be washed and sanitized before being returned to work areas.

(3)~~(b)~~ Disposable type containers shall not be reused.

(4)(2) Containers for garbage and refuse shall be:

(a) Covered and stored outside; and

(b) Placed on an approved platform to prevent:

1. Overturning by animals;

2. The entrance of flies; or

3. The creation of a nuisance.

(5) All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect, or other vermin problem.

(6)(3) Immediately after emptying, containers for garbage shall be cleaned.

(7)(4) All medical waste shall be managed in accordance with Section 9 of this administrative regulation.

Section 19. Outside Areas. (1) All outside areas, grounds, and adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a:

(a) Fire hazard; or

(b)~~as a~~ Haven for insects, rodents, and other pests.

(2) Outside stairs, walkways, ramps, and porches shall be maintained free from accumulations of water, ice, snow, and other impediments.

Section 20. Disaster Preparedness. (1) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

(2) The plan shall be posted.

(3) Staff shall be trained in:

(a) Properly reporting a fire;

(b)~~(c)~~ Extinguishing a small fire;

(c)~~(d)~~ Evacuation from the building; and

(d) Procedures for fire safety, including fire drills~~(shall be practiced in accordance with state fire administrative regulations)~~.

(4)(2) All fire protection and alarm systems and other firefighting equipment shall be inspected and tested at least once each year, and more often if necessary to maintain them in serviceable condition.

Section 21. Facility Specifications. (1) An abortion facility shall provide a functionally safe and sanitary environment for patients, personnel, and the public.

(2) An abortion facility shall include space for the following functions:

(a) Reception and waiting;

(b) Administrative activities such as patient admission, record storage, and business affairs;

(c) Patient dressing and storage of personal items;

(d) Preoperative evaluation, including:

1. Physical examination;

2. Laboratory testing; and

3. Preparation for anesthesia;

(e) Performance of surgical procedures;

(f) Preparation and sterilization of instruments;

(g) Storage of equipment, drugs, and fluids;

(h) Postanesthetic recovery; and

(i) Janitorial and utility support.

Section 22. Injunctive Relief. The Office of Inspector General shall refer instances where administrative penalties and legal sanctions have failed to prevent or cause a discontinuance of a violation of KRS Chapter 216B to the secretary of the cabinet for action in accordance with KRS 15.241.

Section 23. Incorporation by Reference. (1) Form OIG 240" ~~[The] Application for License to Operate an Abortion Facility", June 2017~~[L&R 240, (7/98)], is incorporated by reference.

(2) This material may be inspected, copied or obtained subject to applicable copyright law at the Office of Inspector General, Division of ~~Health Care~~Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 15, 2017

FILED WITH LRC: June 16, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Robert S. Silverthorn, Jr., Inspector General, Office of Inspector General, phone 502-564-2888, email robert.silverthorn@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for abortion facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.0431.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.0431 by establishing standards and procedures for abortion facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation assists in the effective administration of the statutes by establishing standards and procedures for abortion facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by adding a cross-reference to the requirement established in KRS 311.727 for informed consent to be obtained prior to performing an obstetric ultrasound; removing the tuberculin skin testing requirements from this administrative regulation and replacing those requirements with a cross-reference to 902 KAR 20:205; permitting an equivalent nationally recognized organization (in addition to the American Red Cross or American Heart Association) to certify staff members to perform cardiopulmonary resuscitation; requiring each facility to include in its written orientation program the policies and procedures regarding confidentiality of patient information and records; requiring that employees and volunteers receive revised job descriptions; requiring that written patient care policies and procedures include specific details about an obstetric ultrasound as required by KRS 311.727; establishing standards for effective transfer and transport agreements that serve to minimize risks associated with an emergency situation through the use of carefully designed protocols focused on maximizing the efficiency of the patient's transfer; updating references to the agency to use the current names of the Cabinet for Health and Family Services, Office of Inspector General, and Division of Health Care; and making changes to comply with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The changes are needed to comply with 2017 Ky. Acts ch. 2 (enacted as KRS 311.727), as well as existing provisions in KRS 216B.0431 and 216B.0435

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.0431 by establishing standards and procedures for abortion facilities and complies with KRS 311.727 by requiring an obstetric ultrasound.

(d) How the amendment will assist in the effective administration of the statutes This administrative regulation assists in the effective administration of the statutes by amending standards and procedures for abortion facilities to comply with current law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as abortion facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: each facility will need to comply with the requirements of KRS 311.727 regarding the performance of an obstetric ultrasound; each facility may use an equivalent nationally recognized organization (in addition to the American Red Cross or American Heart Association) for certification of staff members to perform cardiopulmonary resuscitation; each facility will be required to include in its written orientation program the policies and procedures regarding confidentiality of patient information and records; each facility will be required to distribute revised job descriptions to employees and volunteers; each facility will need to include in its written patient care policies and procedures specific details about an obstetric ultrasound as required by KRS 311.727; and each facility will need to comply with the standards for effective transfer and transport agreements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be licensed by the cabinet and will be in compliance with state law.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as abortion facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.0431, 216B.0435

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Audits and Investigations (Amendment)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(11)(9), 218A.202, 218A.240
STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), (17), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS

218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances [that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy]. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a) 1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(11)(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy that [which] has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(7) "Practitioner" is defined by KRS 218A.010(39)(33).

(8) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

(9) "Suspected drug overdose" means an acute condition that:

(a) May include physical illness, coma, mania, or hysteria that is the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and

(b) Relates to injury, poisoning by, or other adverse effect of any substance corresponding to the following International Classification of Disease (ICD) version 10 (ICD-10) codes:

1. T40;

2. T42; or

3. T43.

Section 2. Data Reporting. (1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) through (c) [and (b)].

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of the drug dispensed;

(d) Date of dispensing;

(e) Estimated days the supply of [day's supply] dispensed medication will last;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Prescription [Serial] number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

~~(3)(a) Prior to July 1, 2013, the data identified in subsection (2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.~~

~~(b) Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.~~

~~(c) Effective July 1, 2013,] The data identified in subsection (2) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.~~

(4)(a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Secure File Transfer Protocol;

(c) https protocol; or

(d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the ["JASAP Telecommunications Format for Controlled Substances"], developed by the American Society for Automation in Pharmacy, Version 4.2 [4-4], or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by ["JASAP Telecommunications Format for Controlled Substances"], shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

(9) To meet the reporting requirement of KRS 218A.202(4), a hospital shall report all positive toxicology screens performed by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER.

(3) A request for a KASPER provider report made by a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the ["Request for] KASPER Report Request for [(Law Enforcement and Licensure Boards)]", Form DCB-15L.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the

decedent.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall have [be] authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER according to the Office of Inspector General's retention schedule on file with [for a period of two (2) years plus the current year prior to its transfer to] the State Archives and Records Commission.

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(9)(b) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database within seven (7) calendar days of the request for the correction; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.

(3) If a dispenser maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the [Drug Enforcement and Professional Practices] branch [(DEPPB)] to identify the source of an error in the KASPER report, and the cabinet shall correct the information in the KASPER database.

(4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive

that data under KRS 218A.202(7)(b).

(2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(7)(b)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports, which:

(a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4)(a) An individual authorized to receive data under KRS 218A.202(7)(b) shall not provide the data to any other entity except as provided in KRS 218A.202(9)(b) and paragraph (b) of this subsection.

(b) In addition to the purposes authorized under KRS 218A.202(9)(b)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(7)(b)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(5) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.2, September 2011 [4.1, November 2009]; and

(b) "[Request for] KASPER Report Request for [Law Enforcement and Licensure Boards]", Form DCB-15L, February 2016 [12/40].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent

to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, Phone: 502-564-7905, Fax: 502-564-7573; Tricia.Orme@ky.gov. REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, Regulation Coordinator, e-mail: stephanie.brammer@ky.gov, phone: 502-564-2888; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements related to the State's prescription monitoring program, known as the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system, which is designed to help prevent and detect the diversion and abuse of controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 218A.202.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II, III, IV, and V controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: For purposes of implementing HB 314 passed during the 2017 legislative session, this amendment defines the term "suspected drug overdose" as it relates to the new requirement established in KRS 218A.202(4) for hospitals to report all positive toxicology screens performed by the hospital's emergency department to evaluate a patient's suspected drug overdose. This amendment also makes technical changes to correct obsolete cross-references and delete reporting timeframes that were in effect prior to July 1, 2013.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the new reporting requirement established in KRS 218A.202(4) as a result of the passage of HB 314.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 218A.202 by implementing KASPER system requirements for monitoring Schedule II through V controlled substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist with the effective administration of the statutes by implementing KASPER system requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects practitioners and dispensers required by state law to use the KASPER system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pursuant to KRS 218A.202(4) and Section 2(9) of this administrative regulation, hospitals are required to report all positive toxicology screens performed by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by prescribing practitioners or pharmacies in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providing a prescribing practitioner with critical information regarding a patient's history of drug overdose, if any, enhances the practitioner's ability to make an informed decision when prescribing controlled substances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial cost of implementing this amendment is budget neutral.

(b) On a continuing basis: The estimated recurring cost to KASPER is \$32,240 for helpdesk support.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects practitioners and dispensers required by state law to use the KASPER system.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? The initial cost of implementing this amendment is budget neutral.

(d) How much will it cost to administer this program for subsequent years? The estimated recurring cost to KASPER is \$32,240 for helpdesk support.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

RELATES TO: KRS 205.520(3), 205.8451, 210.370-210.485[, 210.380], 42 C.F.R. 400.203, 413, 438.2, 447.325, 42 U.S.C. 1396n(c), 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, [42 C.F.R. 447.325,] 42 U.S.C. 1396a[d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.6313(4) requires the cabinet to promulgate administrative regulations to implement Medicaid reimbursement for primary care practitioners at community mental health centers. This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "1915(c) home and community based waiver services provider" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Allowable costs" means that portion of a facility's cost that may be allowed by the department for reimbursement purposes.

(3) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485[meets the community mental health center requirements established in 902 KAR 20:094].

(5) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Enrollee" means a recipient who is enrolled with a managed care organization.

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9) "Federal indirect rate" means the rate approved by the United States Department for Health and Human Services (HHS) for grantee institutions to be used to calculate indirect costs as a percentage of direct costs.

(10) "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(11) "Healthcare Common Procedure Coding System code" means a billing code:

- (a) Recognized by Medicare; and
- (b) Monitored by the Centers for Medicare and Medicaid Services.

(12) "~~Injectable drug~~" means ~~an injectable, infused, or inhaled drug or biological that:~~

- ~~(a) Is not excluded as a non-covered immunization or vaccine;~~
- ~~(b) Requires special handling, storage, shipping, dosing, or administration; and~~
- ~~(c) Is a rebatable drug.~~

(13) "Interim reimbursement" means a reimbursement:

- (a) In effect for a temporary period of time; and
- (b) That does not represent final reimbursement for services

provided during the period of time.

(13)[(44)] "Kentucky-specific Medicare Physician Fee Schedule" means the list of current reimbursement rates for physician services established by the Centers for Medicare and Medicaid Services and available on the CMS Web site at www.cms.gov~~established by the department in accordance with 907 KAR 3:040, Section 3].~~

(14)[(45)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(15)[(46)] "Medicaid allowable costs" means the costs:

(a) Associated with the Medicaid-covered services covered pursuant to 907 KAR 1:047 and 907 KAR 1:044:

- 1. Rendered to recipients who are not enrollees; and
- 2. Not rendered as a 1915(c) home and community based waiver services provider; and

(b) Determined to be allowable costs by the department.

(16)[(47)] "Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

- (a) Highlights the critical relationship between physician salaries and productivity;
- (b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

- 1. Performance ratios illustrating the relationship between compensation and production; and
- 2. Comprehensive and summary data tables that cover many specialties.

(17)[(48)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(18)[(49)] "Medicare Economic Index" means a measure of inflation:

- (a) Associated with the costs of physicians' practices; and
- (b) Published in the Federal Register.

(19)[(20)] "Outreach services" means provider programs:

- (a) Specifically designed to:
 - 1. Engage recipients for the purposes of supporting Medicaid or Children's Health Insurance Program (CHIP) enrollment efforts;
 - 2. Assist recipients with finding healthcare or coverage options; and
 - 3. Promote preventive services for recipients; and
- (b) That are directly assigned or allocated to a cost report line that is not cost settled by the department.

(20)[(24)] "Payment plan request" means a request to pay an amount owed to the department over a period of time that is agreed to by the department.

(21) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

- (a) Provided or administered to a Medicaid recipient;
- (b) Billed by a provider other than a pharmacy provider through the medical benefit, including providers who are physician offices or another outpatient clinical setting; and
- (c) An injectable or noninjectable drug furnished incident to provider services that are billed separately to Medicaid.

(22) "Primary care services" means services covered as established in 907 KAR 1:047.

(23) "Provider" is defined by KRS 205.8451(7).

(24) "~~Rebateable~~[Rebateable drug]" means a drug for which the ~~drug~~[drug's] manufacturer has entered into and has in effect[or ~~complied with~~] a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(25) "Recipient" is defined by KRS 205.8451(9).

(26) "State fiscal year" means the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

Section 2. General Reimbursement Provisions. (1) The department shall reimburse a participating in-state community mental health center under this administrative regulation for services:

- (a) If the services are:
 1. Covered pursuant to:
 - a. 907 KAR 1:044; or
 - b. 907 KAR 1:047;
 2. Not provided by the CMHC acting as a 1915(c) home and community based waiver services provider, as those services are reimbursed based on the home and community based waiver;
 3. Provided to recipients who are not enrolled with a managed care organization; and
 4. Medically necessary; and
- (b) Based on the community mental health center's Medicaid allowable costs.
- (2) The department's reimbursement shall include reimbursing:
 - (a) On an interim basis during the course of a cost report period; and
 - (b) A final reimbursement for the state fiscal year that results from a reconciliation of the interim reimbursement amount paid to the CMHC compared to the CMHC's Medicaid allowable cost by cost center for the state fiscal year.

Section 3. Interim Reimbursement for Primary Care Services and PAD[Injectable Drugs]. (1) The department's interim reimbursement to a CMHC for primary care services shall depend upon the type of primary care service.

(2)(a)[1.] The department's interim reimbursement for[physician] services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless a[no] reimbursement for the service does not exist[exists] on the current Kentucky-specific Medicare Physician Fee Schedule for the following:

1. Physician services;
2. Laboratory services;
3. Radiological services;
4. Occupational therapy;
5. Physical therapy; or
6. Speech-language pathology[for the given service].

(b) If[2- If no] reimbursement for a given[physician] service listed in paragraph (a) of this subsection does not exist[exists] on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010 or 907 KAR 8:045. [(b)1. The department's interim reimbursement for laboratory services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Laboratory Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule for the given service.

2. If no reimbursement for a given laboratory service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(c)1. The department's interim reimbursement for radiological services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

2. If no reimbursement for a given radiological service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(d)1. The department's interim reimbursement for occupational therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given occupational therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(e)1. The department's interim reimbursement for physical therapy service shall be the reimbursement established for the

service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given physical therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(f)1. The department's interim reimbursement for speech-language pathology service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given speech-language pathology service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.]

(3) The department's interim reimbursement for the cost of PAD[injectable drugs administered] in a CMHC shall be the reimbursement methodology established in 907 KAR 23:020[3:010 for injectable drugs].

Section 4. Interim Reimbursement for Behavioral Health Services. (1)(a) To establish interim rates for behavioral health services effective for dates of service through June 30, 2018, the department shall use the CMHC rates paid effective July 1, 2015.

(b) To establish interim rates for behavioral health services effective for dates of service July 1, 2018, and each subsequent July 1, the department shall use a CMHC's most recently submitted cost report that meets the requirements established in paragraph (c) of this subsection.

(c) The cost report shall comply with all requirements established in Section 5(1) of this administrative regulation.

(2) The department shall:

(a) Review the cost report referenced in subsection (1)(b) of this section; and

(b) Establish interim rates for Medicaid-covered behavioral health services:

1. To be effective July 1, 2018;
2. Based on Medicaid allowable costs as determined by the department through its review;
3. Intended to result in a reimbursement for Medicaid-covered behavioral health services:

- a. Provided to recipients who are not enrollees; and
- b. That equals the department's estimate of behavioral health services' costs for the CMHC for the period; and

4. That shall be updated effective July 1, 2019, and each July 1 thereafter, based on the most recently received cost report referenced in subsection (1)(b) of this section.

(3) Interim rates for behavioral health services effective July 1 each calendar year shall have been trended and indexed from the midpoint of the cost report period to the midpoint of the rate year using the Medicare Economic Index.

(4) To illustrate the timeline referenced in subsection (2)(b)1. of this section, a cost report submitted by a CMHC to the department on December 31, 2017, shall be used by the department to establish behavioral health services' interim rates effective July 1, 2018.

(5)(a) A behavioral health services interim rate shall not be subject to retroactive adjustment except as specified in this subsection.

(b) The department shall adjust a behavioral health services interim rate during the state fiscal year if the rate that was established appears likely to result in a substantial cost settlement that could be avoided by adjusting the rate.

(c)1. If the cost report from a CMHC has not been audited or desk-reviewed by the department prior to establishing interim rates for the next state fiscal year, the department shall use the cost report under the condition that interim rates shall be subject to adjustment as established in subparagraph 2. of this paragraph.

2. A behavioral health services interim rate based on a cost

report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3. An unaudited cost report shall be subject to an adjustment to the audited amount after the auditing has occurred.

(d) Upon receipt of the cost report filed December 31, 2017, the department shall review the cost report to determine if the interim rates established in accordance with subsection (1)(a) of this section need to be revised to more closely reflect the costs of services for the interim period.

Section 5. Final Reimbursement Beginning with the State Fiscal Year that Begins July 1, 2018. (1)(a) For the state fiscal year spanning July 1, 2017, through June 30, 2018, and for subsequent state fiscal years, by December 31 following the end of the state fiscal year, a CMHC shall submit a cost report to the department:

1. In a format that has been approved by the Centers for Medicare and Medicaid Services;

2. That has been audited by an independent auditing entity; and

3. That states all of the:

a. CMHC's Medicaid allowable direct costs for:

(i) Medicaid-covered services rendered to eligible recipients during the cost report period; and

(ii) Medicaid-covered ~~PAD[injectable drugs]~~ rendered to eligible recipients during the cost report period;

b. CMHC's costs associated with:

(i) Medicaid-covered services rendered to enrollees during the cost report period; and

(ii) Medicaid-covered ~~PAD[injectable drugs]~~ rendered to enrollees during the cost report period;

c. Costs of the community board for mental health or individuals with an intellectual disability under which the CMHC operates for the cost report period; and

d. CMHC's costs associated with services rendered to individuals:

(i) That were reimbursed by an insurer or party other than the department or a managed care organization; and

(ii) During the cost report period.

(b) To illustrate the timeline referenced in paragraph (a) of this subsection, an independently audited cost report stating costs associated with services and ~~PAD[injectable drugs]~~ provided during the state fiscal year spanning July 1, 2017, through June 30, 2018, shall be submitted to the department by December 31, 2018.

(2) By October 1 following the department's receipt of a CMHC's completed cost report submitted to the department by the prior December 31, the department shall:

(a) Review the cost report referenced in subsection (1)(a) of this section; and

(b) Compare the Medicaid allowable costs to the department's interim reimbursement for Medicaid-covered services and ~~PAD[injectable drugs]~~ rendered during the same state fiscal year.

(3)(a) After the department compares a CMHC's interim reimbursement with the CMHC's Medicaid allowable costs for the period, if the department determines that the interim reimbursement:

1. Was less than the CMHC's Medicaid allowable costs for the period, the department shall send a payment to the CMHC equal to the difference between the CMHC's total interim reimbursement and the CMHC's Medicaid allowable costs; or

2. Exceeded the CMHC's Medicaid allowable costs for the period, the:

a. Department shall send written notification to the CMHC requesting the amount of the overpayment; and

b. CMHC shall, within thirty (30) calendar days of receiving the department's written notice, send a:

(i) Payment to the department equal to the excessive amount; or

(ii) Payment plan request to the department.

(b) A CMHC shall not implement a payment plan unless the department has approved the payment plan in writing.

(c) If a CMHC fails to comply with the requirements established in paragraph (a)2 of this subsection, the department shall:

1. Suspend payment to the CMHC; and

2. Recoup the amount owed by the CMHC to the department.

Section 6. Final Reimbursement for the Cost Report Period Spanning November 1, 2016, through June 30, 2017. The provisions established in Section 5 of this administrative regulation shall apply to final reimbursement for the period beginning November 1, 2016, through June 30, 2017, except that the cost report period shall begin November 1, 2016, and end June 30, 2017.

Section 7. New Services. (1) Reimbursement regarding a projection of the cost of a new Medicaid-covered service or expansion shall be made on a prospective basis in that the costs of the new service or expansion shall be considered when actually incurred as an allowable cost.

(2)(a) A CMHC may request an adjustment to an interim rate after reaching the mid-year point of the new service or expansion.

(b) An adjustment shall be based on actual costs incurred.

Section 8. Auditing and Accounting Records. (1)(a) The department shall perform a desk review of each cost report to determine if an audit is necessary and, if so, the scope of the audit.

(b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.

(c) A desk review or audit shall be used to verify costs to be used in setting the interim behavioral health services rate, to adjust interim behavioral health services rates that have been set based on unaudited data, or for final settlement to cost.

(2)(a) A CMHC shall maintain and make available any records and data necessary to justify and document:

1. Costs to the CMHC;

2. Services provided by the CMHC;

3. The cost of ~~PAD[injectable drugs]~~ provided, if any, by the CMHC;

4. Cost allocations utilized including overhead statistics and supportive documentation;

5. Any amount reported on the cost report; and

6. Chart of accounts.

(b) The department shall have unlimited on-site access to all of a CMHC's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; or

5. Program planning.

(3) A CMHC shall maintain an acceptable accounting system to account for the:

(a) Cost of total services provided;

(b) Charges for total services rendered; and

(c) Charges for covered services rendered to eligible recipients.

(4) An overpayment discovered as a result of an audit or desk review shall be settled through recoupment or withholding.

Section 9. Allowable and Nonallowable Costs. (1) The following shall be allowable costs:

(a) Services' or drugs' costs associated with the services or drugs;

(b) Depreciation as follows:

1. A straight line method shall be used;

2. The edition of the American Hospital Association's useful life guidelines currently used by the Centers for Medicare and Medicaid Services' Medicare program shall be used;

3. The maximum amount for expensing an item in a single cost report shall be \$5,000; and

4. Only the depreciation of assets actually being used to provide services shall be recognized;

(c) Interest costs;

(d) Costs incurred for research purposes, which shall be allowable to the extent that the research costs are related to usual patient services and are not covered by separate research funding;

(e) Costs of motor vehicles used by management personnel up to \$25,000;

(f) Costs for training or educational purposes for licensed professional staff outside of Kentucky excluding transportation costs to travel to the training or education;

(g) Costs associated with any necessary legal expense incurred in the normal administration of the CMHC;

(h) The cost of administrative staff salaries, which shall be limited to the average salary for the given position as established for the geographic area on www.salary.com;

(i) The cost of practitioner salaries, which shall be limited to the median salary for the southern region as reported in the Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report, if available.

1. A per visit amount using MGMA median visits shall be utilized.

2. The most recently available MGMA publication that relates to the cost report period shall be used;

(j) Indirect costs, which shall be:

1. Calculated utilizing the approved federal indirect rate, if the provider has an approved federal indirect rate.

a. A provider shall include in indirect costs on line one (1) of the cost report the same category of costs identified as indirect within the approved federal indirect rate supporting documentation.

b. Direct costs shall be those costs identified as direct within the approved federal indirect rate.

c. The federal indirect rate shall be applied to the same category of expenses identified as direct during the federal rate determination; or

2. If the provider does not have a federal indirect rate, those costs of an organization that are not specifically identified with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs. The actual allowable cost of indirect services as reported on the cost report shall be allocated to direct cost centers based on accumulated cost if a federal indirect rate is not available; and

(k) Services provided in leased or donated space outside the walls of the facility.

(2) To be allowable, costs shall comply with reasonable cost principles established in 42 C.F.R. 413.

(3) The allowable cost for a service or good purchased by a facility from a related organization shall be in accordance with 42 C.F.R. 413.17.

(4)(a) The following shall not be allowable costs:

1. Bad debt;

2. Charity;

3. Courtesy allowances;

4. Political contributions;

5. Costs associated with an unsuccessful lawsuit against the department or the Cabinet for Health and Family Services;

6. Costs associated with any legal expense incurred related to a judgment granted as a result of an unlawful activity or pursuit;

7. The value of services provided by nonpaid workers;

8. Travel or related costs or expenses associated with nonlicensed staff attending:

a. A convention;

b. A meeting;

c. An assembly; or

d. A conference;

9. Costs related to lobbying;

10. Costs related to outreach services; or

11. Costs incurred for transporting recipients to services.

(b) Outreach services' costs shall either be directly assigned or allocated to a cost report line that is not cost-settled by the department.

(5) A discount or other allowance received regarding the purchase of a good or service shall be deducted from the cost of the good or service for cost reporting purposes, including in-kind donations.

(6)(a) Maximum allowable costs shall be the maximum amount that may be allowed as reasonable cost for the provision of a service or drug.

(b) To be considered allowable, a cost shall:

1. Be necessary and appropriate for providing services; and

2. Not exceed usual and customary charges.

(7) For direct and indirect personnel costs, 100 percent time reporting methods shall be utilized to group and report expenses to each cost category. Detailed documentation shall be available upon request.

Section 10. Units of Service. (1) Interim payments for behavioral health services, physician services, physical therapy services, occupational therapy services, speech-language pathology services, laboratory services, or radiological services shall be based on units of service.

(2) A unit for a behavioral health service, a physician service, a physical therapy service, a speech-language pathology service, an occupational therapy service, a laboratory service, or a radiological service shall be the amount indicated for the corresponding:

(a)[4-] CPT code; or

(b)[2-] Healthcare Common Procedure Coding System code.

Section 11. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center shall be the lesser of the:

(1) Charges for the service;

(2) Facility's rate as set by the state Medicaid Program in the other state; or

(3) The state-wide average of payments for in-state community mental health centers.

Section 12. Appeal Rights. A community mental health center may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 13. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 14. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.907 KAR 1:045

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.6313(4) requires the cabinet to promulgate an administrative regulation to implement Medicaid reimbursement for primary care practitioners at community mental health centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting the definition of "injectable drug"; adding definitions of "physician administered drug" or "PAD" and "rebateable"; and requiring that the department's interim reimbursement for the cost of physician administered drugs in a CMHC shall be the reimbursement methodology established in 907 KAR 23:020. Additional changes include amending the definition of "community mental health center" to match the definition established in 907 KAR 3:010; and correcting citations and making other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this

administrative regulation: The fourteen (14) community mental health centers will be affected by the amendment as will physicians, physician assistants, and advanced practice registered nurses who wish to provide primary care services in a CMHC.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow the reimbursement methodology established in 907 KAR 23:020 for interim reimbursement for the cost of physician administered drugs in a community mental health center, rather than the current requirements for injectable drug reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In complying with 907 KAR 23:020, as required by the amendment to this administrative regulation, applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to Medicaid recipients who are not enrolled with a managed care organization. The main benefit of complying with this administrative regulation that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 U.S.C. 1396a

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or

local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:020. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:020.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 1:047. Community mental health center primary care services.

RELATES TO: KRS 205.520, 205.622, 205.8451(9), 210.370-210.485~~[210.440]~~, 319A.010(3), (4), 327.010(2), 334A.020(3), 369.101 – 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 493, 45 C.F.R. 164, 42 U.S.C. 12101 et seq., 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313(4)~~], 42 C.F.R. 440.430, 42 U.S.C. 1396d(a)(13)(C)]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.6313(4) requires the cabinet to promulgate administrative regulations to implement Medicaid reimbursement for primary care practitioners at community mental health centers. This administrative regulation establishes the Medicaid Program's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

Section 1. Definitions. (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485~~[meets the community mental health center requirements established in 902 KAR 20:091]~~.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

~~(6) "[Injectable drug] means an injectable, infused, or inhaled drug or biological that:~~

~~(a) Is not excluded as a noncovered immunization or vaccine;~~

~~(b) Requires special handling, storage, shipping, dosing, or administration; and~~

~~(c) Is a rebatable drug.~~

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

~~(7) [(8)]~~ "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(8) [(9)]~~ "Occupational therapist" is defined by KRS 319A.010(3).

~~(9) [(40)]~~ "Occupational therapy assistant" is defined by KRS 319A.010(4).

~~(10) [(44)]~~ "Physical therapist" is defined by KRS 327.010(2).

~~(11) [(42)]~~ "Physical therapist assistant" means a skilled health care worker who:

~~(a) Is certified by the Kentucky Board of Physical Therapy; and~~

~~(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.~~

(12) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including providers who are physician offices or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

~~(13) "Rebateable [Rebateable drug]" means a drug for which the drug [drug's] manufacturer has entered into and has in effect [or complied with] a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).~~

~~(14) "Recipient" is defined by KRS 205.8451(9).~~

~~(15) "Speech-language pathologist" is defined by KRS 334A.020(3).~~

~~(16) "Speech-language pathology clinical fellow" means an individual who is recognized by the American Speech-Language-Hearing Association as a speech-language pathology clinical fellow.~~

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by an individual who is currently licensed or certified in accordance with the respective Kentucky licensure or certification Kentucky Revised Statute or administrative regulation to provide the given service.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 3. Covered Services and ~~PAD[Injectable Drugs]~~. (1)(a) Primary care services provided by a community mental health center and covered under this administrative regulation shall include:

1. Physician services;

2. Laboratory services if the CMHC is certified under CLIA to perform laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; and

6. Speech-language pathology services.

(b) ~~PAD[An injectable drug listed on the Physician Injectable Drug List]~~ that is administered in a CMHC shall be covered in accordance with 907 KAR 23:010~~[under this administrative regulation]~~.

(2)(a) The coverage of:

1. Physician services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005;

2. Laboratory services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005; and

3. Radiological services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005.

(b) Occupational therapy provided by a community mental health center shall be covered under this administrative regulation if provided by an:

1. Occupational therapist; or

2. Occupational therapy assistant who renders services under supervision in accordance with 201 KAR 28:130.

(c) Physical therapy provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Physical therapist; or

2. Physical therapist assistant who renders services under supervision in accordance with 201 KAR 22:053.

(d) Speech-language pathology services provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Speech-language pathologist; or

2. Speech-language pathology clinical fellow who renders services under the supervision of a speech-language pathologist.

Section 4. Service Limitations. (1) The limitations established in 907 KAR 3:005 regarding:

(a) Physician services shall apply to physician services provided by a community mental health center;

(b) Laboratory services shall apply to laboratory services provided by a community mental health center; and

(c) Radiological services shall apply to radiological services provided by a community mental health center.

(2)(a) Except as established in paragraph (b) of this subsection, the limitations and coverage requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

(b) The provision in 907 KAR 8:040 establishing that the eligible providers of occupational therapy, physical therapy, or speech-language pathology services shall be any of the following shall not apply to a community mental health center:

1. An adult day health care program;

2. A multi-therapy agency;

3. A comprehensive outpatient rehabilitation facility;

4. A mobile health service;

5. A special health clinic; or

6. A rehabilitation agency.

Section 5. Prior Authorization Requirements. (1)(a) Except for the prior authorization requirements regarding occupational therapy, physical therapy, and speech-language pathology services and except as established in paragraph (b) of this subsection, the prior authorization requirements established in 907 KAR 3:005 for physician services, laboratory services, and radiological services shall apply to physician services, laboratory services, and radiological services provided by a CMHC under this administrative regulation.

(b) The prior authorization requirements established in 907 KAR 3:005 shall not apply to services provided to recipients who are enrolled with a managed care organization.

(2) The prior authorization requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

Section 6. Duplication of Service Prohibited. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient, including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 8. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the

department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 13. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010. ~~[Section 14. Incorporation by Reference. (1) The "Physician Injectable Drug List", April 1, 2016, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.6313(4) requires the cabinet to promulgate an administrative regulation to implement Medicaid reimbursement for primary care practitioners at community mental health centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting the definition of "injectable drug"; adding definitions of "physician administered drug" or "PAD" and "rebateable"; requiring that physician administered drugs administered in a CMHC shall be covered in accordance with 907 KAR 23:010; and deleting the incorporation by reference of the Physician Injectable Drug List. Additional changes include amending the definition of "community mental health center" to match the definition established in 907 KAR 3:010, and correcting citations and making other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on

March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The fourteen (14) community mental health centers will be affected by the amendment as will physicians, physician assistants, and advanced practice registered nurses who wish to provide primary care services in a CMHC. Additionally, Medicaid recipients who receive services from a CMHC will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow the coverage provisions established in 907 KAR 23:010 for physician administered drugs administered in a CMHC, rather than the current requirements for injectable drug reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:010.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:102. Advanced practice registered nurse services.

RELATES TO: KRS 205.520, 205.622, 205.8451, 314.011, 369.101 – 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 455.410, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d – 1320d-8, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 493, 42 U.S.C. 1396a, b, c, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions relating to advanced practice registered nurse services covered by the Medicaid Program.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by~~in~~ KRS 314.011(7).

(2) "Common practice" means an arrangement through which a physician and an APRN jointly administer health care services.

(3) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Enrollee" means a recipient who is enrolled with a managed care organization.

(6) "Face-to-face" means occurring:

(a) In person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(7) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(8) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(9) "Incidental" means that a medical procedure is:

(a) ~~Is~~ Performed at the same time as a primary procedure; and

(b) ~~Is~~ Clinically integral to the performance of the primary procedure.

(10) ~~"Injectable drug" means an injectable, infused, or inhaled drug or biological that:~~

~~(a) Is not excluded as a non-covered immunization or vaccine;~~

~~(b) Requires special handling, storage, shipping, dosing, or administration; and~~

~~(c) Is a rebatable drug.~~

(11) ~~"Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.~~

(12) ~~"Locum tenens APRN" means an APRN:~~

~~(a) Who temporarily assumes responsibility for the professional practice of an APRN participating in the Kentucky Medicaid Program; and~~

~~(b) Whose services are billed under the Medicaid participating APRN's provider number.~~

(13) ~~"Locum tenens physician" means a substitute physician:~~

~~(a) Who temporarily assumes responsibility for the professional practice of an APRN participating in the Kentucky Medicaid Program; and~~

~~(b) Whose services are billed under the Medicaid participating APRN's provider number.~~

(14) ~~"Managed care organization" means an entity for which the Department for Medicaid Services has contracted to~~

serve as a managed care organization as defined by~~in~~ 42 C.F.R. 438.2.

(15) ~~"Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.~~

(16) ~~"Mutually exclusive" means that two (2) procedures:~~

~~(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;~~

~~(b) Represent two (2) methods of performing the same procedure;~~

~~(c) Represent medically impossible or improbable use of CPT codes; or~~

~~(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.~~

(17) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

~~(18) "New patient" means a recipient who has not received professional services from the provider within the past three (3) years.~~

~~(19) "Provider" is defined by KRS 205.8451(7)(8).~~

~~(20) "Provider group" means a group of at least:~~

~~(a) Two (2) individually licensed APRNs who:~~

~~1. Are enrolled with the Medicaid Program individually and as a group; and~~

~~2. Share the same Medicaid group provider number; or~~

~~(b) One (1) APRN and at least one (1) physician who:~~

~~1. Are enrolled with the Medicaid Program individually and as a group; and~~

~~2. Share the same Medicaid group provider number.~~

~~(21) "Rebateable drug" means a drug for which the drug's manufacturer has entered into and has in effect or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).~~

~~(22) "Recipient" is defined by KRS 205.8451(9).~~

~~(23) "Timely filing" means receipt of a Medicaid claim by the department within:~~

~~(a) Within Twelve (12) months of the date the service was provided;~~

~~(b) Within Twelve (12) months of the date retroactive eligibility was established; or~~

~~(c) Within Six (6) months of the Medicare adjudication date if the service was billed to Medicare.~~

Section 2. Conditions of Participation. (1) To participate in the Medicaid program as a provider, an APRN or provider group shall comply with:

(a) 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and

(b) The requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

(2) A provider:

(a) Shall bill the:

1. Department rather than the recipient for a covered service; or

2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee;

(b) May bill the recipient for a service not covered by Medicaid if the provider informed the recipient of non-coverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

a. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

b. Incorrect billing procedures including incorrect bundling of services;

c. Failure to obtain prior authorization for the service; or
d. Failure to meet timely filing requirements; and
2. Shall not bill the enrollee for a service that is denied by the managed care organization in which the recipient is enrolled if the recipient is an enrollee on the basis of:

a. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

b. Incorrect billing procedures including incorrect bundling of services;

c. Failure to obtain prior authorization for the service if prior authorization is required by the managed care organization; or

d. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

(b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(4)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longer of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) or (b) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) If a provider fails to maintain a health record pursuant to subsection (4) or (5) of this section, the department shall:

(a) Not reimburse for any claim associated with the health record; or

(b) Recoup from the provider any payment made associated with the health record.

(7) A provider shall comply with 45 C.F.R. Part 164.

(8)(a) A service provided by an APRN to a recipient shall be substantiated by a health record[records] signed by the APRN that corresponds[which correspond] to the date and service reported on the claim submitted for payment to the:

1. Department if the claim is for a service to a recipient who is not an enrollee; or

2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee.

(b) If rendering services to a recipient in a hospital, an APRN shall document in the health record of the hospitalized recipient that the APRN performed one (1) or more of the following:

1. A personal review of the recipient's medical history;

2. A physical examination;

3. A confirmation or revision of the recipient's diagnosis;

4. A visit with the recipient; or

5. A discharge service for the recipient.

Section 3. APRN Covered Services. (1)(a) An APRN covered service shall be:

1. A medically necessary[medically-necessary] service furnished by an APRN through face-to-face interaction between the APRN and the recipient except as established in paragraph (c) of this subsection; and

2. A service that[which] is:

a. Within the legal scope of practice of the APRN as specified in:

(i) 201 KAR 20:057; and

(ii) 201 KAR 20:059; and

b. Eligible for reimbursement by Kentucky Medicaid.

(b) Any service covered pursuant to 907 KAR 3:005 shall be covered under this administrative regulation if it meets the requirements established in paragraph (a) of this subsection.

(c) Face-to-face interaction between the APRN and recipient shall not be required for:

1. A radiology service;

2. An imaging service;

3. A pathology service;

4. An ultrasound study;

5. An echographic study;

6. An electrocardiogram;

7. An electromyogram;

8. An electroencephalogram;

9. A vascular study;

10. A telephone analysis of an emergency medical system or a cardiac pacemaker if provided under APRN direction;

11. A sleep disorder service;

12. A laboratory service; or

13. Any other service that is customarily performed without face-to-face interaction between the APRN and the recipient.

(2) The prescribing of drugs by an APRN shall be in accordance with 907 KAR 23:010[1:019].

(3) A covered delivery service provided in a:

(a) Hospital shall include:

1. Admission to the hospital;

2. Admission history;

3. Physical examination;

4. Anesthesia;

5. Management of uncomplicated labor;

6. Vaginal delivery; and

7. Postpartum care; or

(b) Freestanding birth center shall include:

1. Delivery services in accordance with 907 KAR 1:180, Section 3(3); and

2. Postnatal visits in accordance with 907 KAR 1:180, Section 3(4).

(4) An EPSDT screening service shall be covered if provided in compliance with the periodicity schedule established in 907 KAR 11:034.

(5) Behavioral health services established in 907 KAR 15:010 that are provided by an APRN or provider group that is the billing provider for the services shall be:

(a) Provided in accordance with 907 KAR 15:010; and

(b) Covered in accordance with 907 KAR 15:010.

(6) A drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010[An injectable drug that is listed on the Physician Injectable Drug List and that is administered by an APRN or provider group shall be covered].

Section 4. Service Limitations and Exclusions. (1)(a) A limitation on a service provided by a physician in accordance with 907 KAR 3:005 shall apply to services covered under this administrative regulation.

(b) A service that is not covered pursuant to 907 KAR 3:005 shall not be covered under this administrative regulation.

(2) The same service performed by an APRN and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3)(a) Except as established in paragraph (b) of this subsection, coverage of a psychiatric service provided by an APRN shall be limited to four (4) psychiatric services per APRN, per recipient, per twelve (12) months.

(b) A service designated as a psychiatry service CPT code that

is provided by an APRN with a specialty in psychiatry shall not be subject to the limit established in paragraph (a) of this subsection.

(4) The department shall not cover more than one (1) of the following evaluation and management services per recipient per provider per date of service:

- (a) A consultation service;
- (b) A critical care service;
- (c) An emergency department evaluation and management service;
- (d) A home evaluation and management service;
- (e) A hospital inpatient evaluation and management service;
- (f) A nursing facility service;
- (g) An office or other outpatient evaluation and management service; or
- (h) A preventive medicine service.

(5) Except for any cost sharing obligation pursuant to 907 KAR 1:604, a:

(a) Recipient shall not be liable for payment of any part of a Medicaid-covered service provided to the recipient; and

(b) Provider shall not bill or charge a recipient for any part of a Medicaid-covered service provided to the recipient.

(6)(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid Program.

(b) The department shall not reimburse for a:

1. Prescription prescribed by a provider that is not currently:

a. Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

b. Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; or

2. Service:

a. Ordered by a provider that is not currently:

(i) Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; or

b. Referred by a provider that is not currently:

(i) Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements. The prior authorization requirements established in 907 KAR 3:005 shall apply to services provided under this administrative regulation.

Section 6. Locum Tenens. The department shall cover services provided by a locum tenens APRN or locum tenens physician under this administrative regulation:

(1) If the service meets the requirements established in this administrative regulation; and

(2) In accordance with:

(a) 201 KAR 20:056; and

(b) 201 KAR 20:057.

Section 7.~~[No]~~ Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program under 907 KAR 8:030, the department shall not reimburse for the same service provided to the same recipient on the same day by another provider enrolled with the Medicaid Program.

Section 8. Third Party Liability. A provider shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS

369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with the claim or health record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeal Rights. An appeal of a department decision regarding:

(1) A recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010. ~~[Section 13. Incorporation by Reference. (1) "Physicians Injectable Drug List", February 16, 2015, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at www.chfs.ky.gov/dms/incorporated.htm.]~~

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send

written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to advanced practice registered nurse services covered by the Medicaid Program.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting the definition of "injectable drug"; adding definitions of "physician administered drug" or "PAD" and "rebateable"; updating cross-references, requiring that a drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010; and deleting the incorporation by reference of the Physician Injectable Drug List. Additionally, the amendment corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects

advanced practice registered nurses enrolled in the Medicaid program. Currently, there are 4,104 individual APRNs enrolled in Kentucky's Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow the coverage provisions established in 907 KAR 23:010 for physician administered drugs, rather than the current requirements for injectable drug reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for

subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:010.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amendment)

907 KAR 1:104. Reimbursement for advanced practice registered nurse[practitioner] services.

RELATES TO: KRS 205.520, 314.011, 42 C.F.R. 438.2, 42 U.S.C. 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, c, d, 42 U.S.C. 447.200, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation

establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program[method for determining amounts payable by the cabinet for a service provided by an advanced practice nurse practitioner (APRN)].

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by[~~in~~] KRS 314.011(7).

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(4) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(5) "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(6) "Usual and customary charge" means the uniform amount the provider charges in the majority of cases for the service or procedure.

Section 2. Reimbursement. (1) The department's reimbursement under this administrative regulation shall be for a service or procedure:

(a) Covered pursuant to 907 KAR 1:102; and

(b) Provided by an APRN or APRN provider group that:

1. Meets the condition of participation requirements established in 907 KAR 1:102, Section 2; and

2. Is the billing provider for the service or procedure.

(2) Except as specified in subsection (3)[(2)] of this section or Section 3 of this administrative regulation, the department shall reimburse for a service or procedure that is covered pursuant to 907 KAR 1:102 at reimbursement for a procedure shall be based on] the lesser of[the following]:

(a) The APRN's or APRN provider group's usual and customary[actual billed] charge for the service or procedure; or

(b) Seventy-five (75) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure pursuant to 907 KAR 3:010.

(3) The department's reimbursement for a behavioral health service covered pursuant to 907 KAR 15:010 that is provided by an APRN or APRN provider group that is the billing provider for the service shall be pursuant to 907 KAR 15:015(2) An APRN employed by a primary care center, federally qualified health center, hospital, or comprehensive care center shall not be reimbursed directly for services provided in that setting while operating as an employee.

Section 3. Reimbursement Limitations. (1) The department shall reimburse an APRN or APRN provider group:

(a) A three (3) dollar and thirty (30) cent fee for each vaccine administered to a Medicaid recipient under the age of nineteen (19)[twenty-one (21)] up to a maximum of three (3) administrations per APRN, per recipient, per date of service; and

(b) The cost of each vaccine administered in accordance with paragraph (a) of this subsection, except as established in subsection (2) of this section.

(2) The department shall not reimburse[an APRN] for the cost of a vaccine that[which] is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(3) The department shall reimburse for a PAD in accordance

with 907 KAR 23:020[Injectable antibiotics, antineoplastic chemotherapy, and contraceptives in accordance with 907 KAR 1:102, Section 3(4), shall be reimbursed for an APRN at the lesser of:

- (a) The actual billed charge; or
- (b) The average wholesale price of the medication supply minus ten (10) percent].

(4)[Reimbursement for an orthopedic service requiring casting or splinting shall be restricted as follows:]

(a) Payment for a cast or splint applied in conjunction with a surgical procedure shall be included[inclusive] in the payment for[ef] the surgical procedure.];

(b) Except as provided by paragraph (c) of this subsection, the department shall not reimburse[Payment shall not be made] for a cast or splint application for the same injury or condition within ninety (90) calendar days:

1. From[ef] the date of the surgical service; or

2. If surgery is not performed, from initial application of the cast or splint.[and]

(c) The department shall reimburse for a second cast or splint applied for a subsequent injury or condition within ninety (90) calendar days of the first cast or splint application[shall be reimbursed] if the claim contains[accompanied by supporting] documentation demonstrating that the injury or condition occurred subsequent to the initial cast or splint application.

(d) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

1. A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

2. The initial cast or splint applied during or following the surgical procedure; and

3. A replacement cast or splint needed as a result of the surgical procedure if:

a. Provided within ninety (90) calendar days of the procedure by the same physician; and

b. Applied for the same injury or condition.

(5) Reimbursement for[ef] an anesthesia service provided during a procedure shall include[be inclusive of the following elements]:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of intravenous fluids, and blood, or blood products incidental to the anesthesia or surgery;

(d) Postoperative pain management; and

(e) Monitoring services.

(6) The department's reimbursement[of a psychiatric service provided by an APRN shall be limited to four (4) psychiatric services per APRN, per recipient, per twelve (12) months.

(7) Reimbursement for a laboratory service provided in an office setting shall include the fee for collecting and analyzing a specimen.

(7)[(8)] A fee for a laboratory test requiring an arterial puncture or a venipuncture shall include the fee for the puncture. [(9)] Reimbursement shall be limited to one (1) of the following evaluation and management services per recipient, per date of service:

(a) A consultation service;

(b) A critical care service;

(c) An emergency department evaluation and management service;

(d) A home evaluation and management service;

(e) A hospital inpatient evaluation and management service;

(f) A nursing facility service;

(g) An office or other outpatient evaluation and management service;

(h) A preventive medicine service; or

(i) A psychiatric or psychotherapy service.]

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 1:102; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights.[(1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including adding a definition of "physician administered drug" or "PAD"; and providing that the department shall reimburse for a physician administered drug in accordance with 907 KAR 23:020. Additionally, the amendment makes changes to align with the Medicaid Physician Fee Schedule amendments proposed for 907 KAR 3:010, including adding definitions of "managed care organization", "provider group", and "usual and customary charge"; to establish the coverage requirements for a service or procedure provided by an APRN or APRN provider group; to clarify the reimbursement limitations for vaccines administered to a Medicaid recipient under age nineteen (19), rather than twenty-one (21), in order to comply with 42 U.S.C. 1396s, and for cast or splint applications; and to delete provisions that either restated or modified provisions of 907 KAR 1:102, including provisions regarding psychiatric services provided by an APRN and reimbursement of evaluation and management services. The amendment also inserts regulatory boilerplate language that this administrative regulation is not applicable to managed care organizations and that reimbursement is contingent upon federal approval and federal financial participation; and it corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding advanced practice registered nurse services covered by the Medicaid Program. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects advanced practice registered nurses enrolled in the Medicaid program. Currently, there are 4,104 individual APRNs enrolled in Kentucky's Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow the reimbursement provisions established in 907 KAR 23:020 for physician administered drugs, rather than the current requirements for injectable drug reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:010.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. Part 414, 424.57, 440.230, [441-Subpart B,] 45 C.F.R. Part 160, 162.1002, Part 164, 42 U.S.C. 1320d, 1395m, 1395w-4, 1396d(i)(1)-(4), 1395m(a)(20)]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d, 2010 Extra. Sess. Ky. Acts ch. 1, Part I, G-3.b.(26)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds [for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) calendar days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. [Ne] Billing is not done prior to the date of the recipient's discharge from the facility.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, or[and] supplies.

(8) "Durable medical equipment" or "DME" means medical equipment that[which]:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) ~~["Family choices" means a benefit plan for an individual who:~~

~~(a) Is covered pursuant to:~~

~~1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;~~

~~2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);~~

~~3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);~~

~~4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);~~

~~5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or~~

~~6. 42 C.F.R. 457.310; and~~

~~(b) Has a designated package code of 2, 3, 4, or 5.~~

~~(10) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents~~[represent] ~~procedures or items.~~

~~(10) [(14)] "Home" means a place where the recipient resides excluding:~~

~~(a) A nursing facility;~~

~~(b) A hospital;~~

~~(c) An intermediate care facility for individuals with an intellectual disability; or~~

~~(d) An institution for mental diseases [individuals with a mental disease] as defined by [in] 42 U.S.C. 1396d(i).~~

~~(11) [(12)] "Incidental" means that a medical procedure or service:~~

~~(a) Is performed at the same time as a more complex primary procedure or service; and~~

~~(b) 1. Requires little additional resources; or~~

~~2. Is clinically integral to the performance of the primary procedure or service.~~

~~(12) [(13)] "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for~~

goods or services provided by the manufacturer or distributor.

(13)[(14)] "Medicaid Program DME[Program] Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, that:

(a) Contains~~containing~~ the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(14)[(15)] "Medical supply" means an item that is:

- (a) Consumable;
- (b) Nonreusable;
- (c) Disposable; and
- (d) Primarily and customarily used to serve a medical purpose.

(15)[(16)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16)[(17)] "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395m(a)(20).

(17)[(18)] "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with each other~~one another~~ during the same patient encounter on the same date of service;

- (b) Represent duplicate or very similar items; or
- (c) Represent medically inappropriate use of HCPCS codes.

(18)[(19)] "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19)[(20)] "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20)[(21)] "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced practice registered nurse, physician~~physician's~~ assistant, or chiropractor who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) If the individual is an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:

- 1. 907 KAR 1:671; and
- 2. 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically necessary~~medically necessary~~ item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(21)[(22)] "Prior authorization" means approval that~~which~~ a supplier shall obtain from the department before being reimbursed.

(22)[(23)] "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23)[(24)] "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits that~~which~~ could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(24)[(25)] "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(25)[(26)] "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)[(a)] Except as provided in subsection (2)[(b)] of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic

shall:

(a)[4-] Be based on medical necessity and reasonableness;
(b)[2-] Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c)[3-] Require prior authorization in accordance with Section 7 of this administrative regulation;

(d)[4-] Be provided in compliance with 42 C.F.R. 440.230(c); and

(e)[5-] Be restricted to an item used primarily in the home.

~~(b) Coverage of prosthetic devices shall not exceed \$1,500 per twelve (12) month period per member of the family choices benefit plan.~~

~~(2)[Unless otherwise established in this administrative regulation:]~~

(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)[(a)] of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)[(a)] of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity, Durable Medical Equipment; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods.

(7) A CMN shall contain:

- (a) The recipient's name and address;
- (b) A complete description of the item or service ordered;
- (c) The recipient's diagnosis;
- (d) The expected start date of the order;
- (e) The length of the recipient's need for the item;
- (f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number, and National Provider Identifier (NPI), if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) calendar days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) calendar days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at

the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

(17) A supplier shall not ship supplies to a recipient unless the supplier has:

(a) First had direct contact with the recipient or the recipient's caregiver; and

(b) Verified:

1. That the recipient wishes to receive the shipment of supplies;

2. The quantity of supplies in the shipment; and

3. Whether or not there has been a change in the use of the supply.

(18) A verification referenced in subsection (17) of this section for each recipient shall be documented in a file regarding the recipient.

(19) If a supplier ships more than a one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.

(20) A supplier shall have an order from a prescriber before dispensing any DMEPOS item to a recipient.

(21) A supplier shall have a written order on file prior to submitting a claim for reimbursement.

Section 3. Purchase or Rental of Durable Medical Equipment.

(1) Except as established on the Medicaid Program DME Fee Schedule~~The following items shall be covered for purchase only:~~

(a) A cane;

(b) Crutches;

(c) A standard walker;

(d) A prone or supine stander;

(e) A noninvasive electric osteogenesis stimulator; or

~~(f) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.~~

(2) ~~The following items shall be covered for rental only:~~

(a) An apnea monitor;

~~(b) A respiratory assist device having bivalve pressure capability with backup rate feature;~~

~~(c) A ventilator;~~

~~(d) A negative pressure wound therapy electric pump;~~

~~(e) An electric breast pump;~~

~~(f) The following oxygen systems:~~

~~1. Oxygen concentrator;~~

~~2. Stationary compressed gas oxygen;~~

~~3. Portable gaseous oxygen;~~

~~4. Portable liquid oxygen; or~~

~~5. Stationary liquid oxygen; or~~

~~(g) Other items designated as rental only in the Medicaid DME Program Fee Schedule.~~

~~(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.~~

~~(2)[(4)](a) A MAP 1001[MAP-1001] form shall be completed if a recipient requests an item or service not covered by the department.~~

~~(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.~~

~~(c) A MAP 1001 shall be completed as follows:~~

~~1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;~~

~~2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;~~

~~3. The DME supplier shall complete the supplier information on the MAP 1001;~~

~~4. The DME supplier shall provide a copy of the completed~~

MAP 1001 to the recipient; and

5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560(1)(c);

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) calendar days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered~~[as follows]~~:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If a~~an~~ warranty is not in effect on the requested repair; and

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(d) In accordance with Section 6(3)[6(2)] of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by an authorized technician[technicians], shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

- (a) Loss of the item;
 - (b) Irreparable damage or wear; or
 - (c) A change in a recipient's condition that requires a change in equipment.
- (5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

- (a) An item covered for Medicaid payment through another Medicaid program;
- (b) Equipment that is not primarily and customarily used for a medical purpose;
- (c) Physical fitness equipment;
- (d) Equipment used primarily for the convenience of the recipient or caregiver;
- (e) A home modification;
- (f) Routine maintenance of DME that includes:
 - 1. Testing;
 - 2. Cleaning;
 - 3. Regulating; and
 - 4. Assessing the recipient's equipment;
- (g) Except as specified in Section 7(1)(j) of this administrative regulation, backup equipment; or
- (h) An item determined not medically necessary, clinically appropriate, or reasonable by the department.

(2) Except if Medicare is the primary payer, the following diabetic supplies (HCPCS codes) shall be covered as a pharmacy benefit at the point of sale:

- (a) A4206, a syringe with needle (sterile, 1cc or less);
- (b) A4250, urine test or reagent strips or tablets;
- (c) A4252, blood ketone test or reagent strip;
- (d) A4253, blood glucose test or reagent strips;
- (e) A4256, calibrating solutions;
- (f) A4258, lancet device;
- (g) A4259, lancets; or
- (h) E0607, home blood glucose monitor[-; or
- (i) Diabetic supplies, except for:
 - 1. Those for which Medicare is the primary payer;
 - 2. Those with an HCPCS code of A4240, A4250, A4252, A4253, A4256, A4258, A4259, E0607 or E2100; or
 - 3. Those with a HCPCS code of A4206 if a diagnosis of diabetes is present on the corresponding claim].

(3)[(2)] An estimated repair shall not be covered if the repair cost equals or exceeds:

- (a) The purchase price of a replacement item; or
- (b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(4)[(3)] Durable medical equipment, prosthetics, orthotics, and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, or intermediate care facility or institution for individuals with an intellectual or developmental disability[-, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program].

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

- (a) An item or repair billed to the department at \$500 or more;
- (b) Rental of equipment as indicated on the Medicaid Program

DME[Program] Fee Schedule excluding oxygen services after twelve (12) continuous months of service;

- (c) Orthopedic shoes;
- (d) An adjustment to a prosthetic or orthotic;
- (e) An augmentative communication device;
- (f) A customized DME item;
- (g) A replacement DME item, prosthetic, or orthotic if replacement is prior to the:
 - 1. Usual and customary lifetime of the item; or
 - 2. Limitation set by the department as indicated in the Medicaid Program DME[Program] Fee Schedule;
- (h) A nutritional supplement;
- (i) An amino acid modified preparation or a low-protein modified food product;
- (j) A loaner item for a member-owned piece of equipment that is being repaired;
- (k) A DMEPOS item denoted by a general or nonspecific HCPCS code;
- (l) An item designated on the Medicaid Program DME[Program] Fee Schedule as requiring prior authorization;
- (m) An item that[which] exceeds the quantity limitation established[set] in the Medicaid Program DME[Program] Fee Schedule; or

(n) An item designated by an[a] HCPCS code not indicated on the Medicaid Program DME[Program] Fee Schedule that is determined by the department to be a covered benefit.

(2)(a) If an item requires prior authorization, a supplier shall:

- 1. a. Submit all required documentation prior to the date of service; or
- b. Within one (1) year from the date of service with department approval;

2. Submit a written request to the department for prior authorization, which shall include the prescriber's order; and

3. Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization.[-and]

(b) If the required prior authorization submittals required by paragraph (a) of this subsection are not submitted within the established time frames, the prior authorization request shall be denied.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization might[may] not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing, faxing, or electronically submitting the following information to the department:

- (a) A completed prior authorization form MAP-9;
 - (b) A completed CMN; and
 - (c) If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.
- (8) The following additional information shall be required for prior authorization of a customized item:
- (a) An estimate of the fitting time;
 - (b) An estimate of the fabrication time;
 - (c) A description of the materials used in customizing the item; and
 - (d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

- (a) A description of the nature of the repair;

- (b) An itemization of the parts required for the repair;
- (c) An itemization of the labor time involved in the repair; and
- (d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

- (a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b)1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

(11) A prior authorization period ~~shall~~may be extended upon the provision of a new CMN indicating current medical necessity and:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

(12)(a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or

2. Guarantee reimbursement.

(b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department ~~may~~shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid Program DME[Program] Fee Schedule; or

(c) If indicated in the Medicaid Program DME[Program] Fee Schedule as manually priced,:

4.] invoice price plus twenty (20) percent for an item not utilizing a billing code~~specified in subparagraph 2 or 3 of this paragraph;~~

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, or K0009; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321 through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2392, E2394 through E2397, E2601 through E2621, K0108, K0669, K0734 through K0737, or L8499].

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by an[a] HCPCS code not currently on the Medicaid Program DME[Program] Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20)

percent.

(b)1. The department shall post HCPCS code change information on its Web site accessible at <http://chfs.ky.gov/dms>.

2. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) Reimbursement for the purchase of an item that has been rented for less than ten (10) months shall be the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid Program DME[Program] Fee Schedule; or

(b) If indicated in the Medicaid Program DME[Program] Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

~~(7)[Except for an item specified in Section 3(2) of this administrative regulation,]~~ If reimbursement for a rental item has been made for a period of ten (10) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid Program DME[Program] Fee Schedule and shall be reimbursed the lessor of:

(a) The supplier's usual and customary charge; or

(b) The reimbursement rate specified in the Medicaid Program DME[Program] Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number;

(2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(3)(a) Provide proof of Medicare accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from Medicare accreditation by CMS; or

(b) If exempt from Medicare accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;

(4) Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1:671; and

(b) 907 KAR 1:672;

(5) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(6) Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider[s] informed the recipient of noncoverage prior to providing the service.

Section 10. Managed Care Organizations and Reimbursement. A managed care organization shall not be required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and re-imbursement.

Section 12. Appeal Rights. (1) If an individual is denied prior authorization for DMEPOS based upon an application of this administrative regulation, the DME supplier involved in the prior authorization request may appeal the denial. To appeal the denial, the DME supplier shall submit to the department, within thirty (30) calendar days of the prior authorization denial, a written request, by mail or fax, for a reconsideration review.

(2) Upon receipt of a reconsideration request and any supporting documentation, the department shall:

(a) Conduct a reconsideration review within thirty (30) calendar days from the receipt of the request;

(b) Base the reconsideration review decision solely upon information that is:

1. Contained in the individual's medical records; and

2. Submitted with the written request pursuant to subsection (1) of this section; and

(c) Issue a notification of approval or denial within five (5) working days of a reconsideration review.

(3) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal.

(4) An appeal of a department decision regarding a Medicaid recipient who is:

(a) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(b) Not enrolled with a managed care organization~~[based upon an application of this administrative regulation]~~ shall be in accordance with 907 KAR 1:563.

~~(5) [An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.~~

~~(6) [An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.~~

Section 13[14]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["]Form MAP-9, "Prior Authorization for Health Services[Form]", July 2010[edition, Department for Medicaid Services];~~

(b) ~~["]Form MAP-1000, "Certificate of Medical Necessity, Durable Medical Equipment", July 2010[edition, Department for Medicaid Services];~~

(c) ~~["]Form MAP-1000B, "Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010 edition[, Department for Medicaid Services]; and~~

(d) ~~["Medicaid DME Program Fee Schedule", November 3,~~

~~2010 edition; and~~

~~(e) ["]Form MAP 1001, "Advance Member Notice", September 2006[edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

~~(a) [.] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.~~

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including specifying the diabetic supplies and corresponding HCPCS codes that shall be covered as a pharmacy benefit at the point of sale. Additionally, the amendment deletes provisions that referenced the family choices benefit plan, which was removed from the Medicaid Program in 2014; provides that durable medical

equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity and except as established on the Medicaid Program DME Fee Schedule, rather than listing in the administrative regulation each item that shall be covered for purchase only and each item covered for rental only; and provides that if indicated on the fee schedule as manually priced, the reimbursement shall be invoice price plus twenty (20) percent for an item not utilizing a billing code, and deleting the listing of HCPCS codes that had a different reimbursement rate. Additionally, the amendment inserts regulatory boilerplate language that an MCO is not required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation and that reimbursement is contingent upon federal approval and federal financial participation; deletes the incorporation by reference of the Medicaid Program DME Fee Schedule; and corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects DME providers enrolled in the Medicaid program. DMS estimates that 2,896 DME providers are enrolled in the Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Diabetic supplies and corresponding HCPCS codes shall be covered as a pharmacy benefit at the point of sale. Additionally, if indicated on the fee schedule as manually priced, the reimbursement shall be invoice price plus twenty (20) percent for an item not utilizing a billing code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement

methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 3:005. Coverage of physicians' services.

RELATES TO: KRS 205.510, 205.520, 205.560, 205.622, 205.8451, 311.840-311.862, 314.011, 369.101-369.120, 42 C.F.R. 400.203, 413.75(b)[445.452], 415.174, 415.184, 431.17, 438.2, 440.40(b), 440.50, 441.200-441.208, 441.250-441.259, 447.26, 455.410, Part 493, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30), 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed psychological associate;
- 2. [(b)] A licensed professional counselor associate;
- 3. [(c)] A certified social worker;
- 4. [(d)] A marriage and family therapy associate;
- 5. [(e)] A licensed professional art therapist associate;
- 6. [(f)] A licensed assistant behavior analyst;
- 7. A licensed clinical alcohol and drug counselor associate;
- 8. A certified psychologist[(g) A physician assistant working under the supervision of a physician]; or
- 9. [(h)] A certified alcohol and drug counselor; and
- (b) Employed by or under contract with the same billing provider as the billing supervisor.

(3) "Common practice" means an arrangement through which a physician assistant administers health care services under the supervision of a physician via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.

(4) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(5) "Department" means the Department for Medicaid Services

or its designee.

(6) "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(7) "Designated primary care provider" means the provider designated as a lock-in recipient's primary care provider:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(8) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(9) "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(10) "Emergency care" means:

(a) Covered inpatient or outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(11) "Enrollee" means a recipient who is enrolled with a managed care organization.

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(14) "Graduate medical education program" or "GME program" means:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined by[(in)] 42 C.F.R. 413.75(b).

(15) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(16) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(17) "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(18) "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(19) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(20) "Managed care organization" means an entity for which

the Department for Medicaid Services has contracted to serve as a managed care organization as defined by[in] 42 C.F.R. 438.2.

(21) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and
2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(22) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) "Medical resident" means:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:
 - a. Temporary license;
 - b. Resident training license; or
 - c. Restricted license; or
2. An unlicensed graduate of a foreign medical school.

(24) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other[one another] during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(25) "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(26) "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse, certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(27) "Other provider preventable condition" is defined by[in] 42 C.F.R. 447.26(b).

(28) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(29) "Physician assistant" is defined by[in] KRS 311.840(3).

~~[(29) "Physician injectable drug" means an injectable, infused, or inhaled drug or biological that:~~

~~(a) Is not typically self-administered;~~

~~(b) Is not excluded as a noncovered immunization or vaccine;~~

~~(c) Requires special handling, storage, shipping, dosing, or administration; and~~

~~(d) Is a rebateable drug.]~~

(30) "Podiatrist" is defined by KRS 205.510(12).

(31) "Provider group" means a group of at least:

(a) Two (2) individually licensed physicians who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number; or

(b) One (1) APRN and at least one (1) physician who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number.

(32) "~~Rebateable~~[~~Rebateable drug~~]" means a drug for which the ~~drug~~[drug's] manufacturer has entered into and has in effect[~~or complied with~~] a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(33) "Recipient" is defined by KRS 205.8451(9).

(34) "Screening" means the evaluation of a recipient by a physician to determine:

(a) If a disease or medical condition is present; and

(b) If further evaluation, diagnostic testing, or treatment is needed.

(35) "Supervising physician" is defined by[in] KRS 311.840(4).

(36) "Supervision" is defined by[in] KRS 311.840(6).

(37) "Timely filing" means receipt of a Medicaid claim by the department:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(38) "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) That[Which] is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

1. Be licensed as a physician in the state in which the medical practice is located;

2. Comply with the:

a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and

b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;

3. Have the freedom to choose whether to provide services to a recipient; and

4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and

2. The service is not a Medicaid-covered service.

(c) 1. If a provider renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the provider's Medicaid provider number or any other entity including a non-Medicaid provider, the recipient shall not be billed for the service.

2. The department shall terminate from Medicaid Program participation a provider who participates in an arrangement in which an entity bills a recipient for a Medicaid-covered service rendered by the provider.

(2) If a provider agrees to provide services to a recipient, the provider:

(a) Shall bill the department rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or

overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(4)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

- (a) Medically necessary;
- (b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;
- (c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and
- (d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

- (a) A service provided by a:
 1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

2. Locum tenens physician who provides direct physician contact;

3. Physician assistant in accordance with Section 7 of this administrative regulation; or

4. Locum tenens APRN who provides direct APRN contact;

(b) A radiology service, imaging service, in office lab, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(c) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(d) A sleep disorder service; or

(e) A telehealth consultation provided in accordance with 907 KAR 3:170.

(3) A service provided by an other licensed medical professional shall be covered if the other licensed medical professional is:

- (a) Employed by the supervising physician; and
 - (b) Licensed in the state of practice.
- (4) A sleep disorder service shall be covered if performed in:

- (a) A hospital; or
- (b) A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:

1. American Sleep Disorders Association; or
2. American Academy of Sleep Medicine; or

~~(c) An independent diagnostic testing facility that:~~

- ~~1. Is supervised by a physician trained in analyzing and interpreting sleep disorder recordings; and~~
- ~~2. Has documentation demonstrating that it complies with criteria approved by the:~~

~~a. American Sleep Disorders Association; or~~

~~b. American Academy of Sleep Medicine].~~

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance provider~~[prescriber]~~ unless:

(a) The service represents emergency care; or

(b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) ~~A[An injectable] drug listed on the Physician Administered[Injectable] Drug List~~~~[that is administered by a physician, APRN, or provider group]~~ shall be covered in accordance with 907 KAR 23:010.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E (441.200 to 441.208) or Subpart F (441.250 to 441.259 and the Appendix to Subpart F), shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F.

(6)(a) Except as provided in paragraph (b) of this subsection, coverage for a service designated as a psychiatry service CPT code and provided by a physician shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

~~(7)[(e)]~~ Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

~~(8)[(d)]~~ Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

~~(9)[(7)]~~ An anesthesia service shall be covered if:

(a) Administered by:

1. An anesthesiologist who remains in attendance throughout the procedure; or

2. An individual who:

- a. Is licensed in Kentucky to practice anesthesia;
- b. Is licensed in Kentucky within his or her scope of practice;

and

c. Remains in attendance throughout the procedure;

(b) Medically necessary; and

(c) Not provided as part of an all-inclusive CPT code.

~~(10)[(8)]~~ The following shall not be covered:

(a) An acupuncture service;

(b) An autopsy;

(c) A cast or splint application in excess of the limits established in 907 KAR 3:010;

(d) Except for therapeutic bandage lenses, contact lenses;

(e) A hysterectomy performed for the purpose of sterilization;

(f) Lasik surgery;

(g) Paternity testing;

(h) A procedure performed for cosmetic purposes only;

(i) A procedure performed to promote or improve fertility;

(j) Radial keratotomy;

(k) A thermogram;

(l) An experimental service that~~[which]~~ is not in accordance with current standards of medical practice;

(m) A service that~~[which]~~ does not meet the requirements established in Section 3(1) of this administrative regulation;

(n) Medical direction of an anesthesia service; or

(o) Medical assistance for another provider preventable condition in accordance with 907 KAR 14:005.

~~(11)[(9)]~~(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid program.

- (b) The department shall not reimburse for a:
1. Prescription prescribed by a provider that is not currently:
 - a. Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - b. Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or
 2. Service:
 - a. Ordered by a provider that is not currently:
 - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or
 - b. Referred by a provider that is not currently:
 - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization. (1) Except as provided by subsection (3) of this section, the following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

- (a) Magnetic resonance imaging;
 - (b) Magnetic resonance angiogram;
 - (c) Magnetic resonance spectroscopy;
 - (d) Positron emission tomography;
 - (e) Cineradiography or videoradiography;
 - (f) Xeroradiography;
 - (g) Ultrasound subsequent to second obstetric ultrasound;
 - (h) Myocardial imaging;
 - (i) Cardiac blood pool imaging;
 - (j) Radiopharmaceutical procedures;
 - (k) Gastric restrictive surgery or gastric bypass surgery;
 - (l) A procedure that is commonly performed for cosmetic purposes;
 - (m) A surgical procedure that requires completion of a federal consent form;~~[or]~~
 - (n) An organ transplant in accordance with 907 KAR 1:350; or
 - (o) A covered unlisted procedure or service.
- (2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.
- (b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

- (a) An emergency service;
 - (b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or
 - (c) A service provided to a recipient in an observation bed.
- (4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse:
- (a) May request prior authorization from the department; and
 - (b) If requesting prior authorization, shall request prior authorization by:

1. Mailing or faxing:
 - a. A written request to the department with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and
 - b. If applicable, any required federal consent forms; or
2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation.

Section 6. Therapy Service Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be:

(a) Prior authorized in accordance with subsection (5) of this section if the recipient is not enrolled with a managed care organization; and

(b) Approved if the additional service is determined to be medically necessary by:

1. The department, if the recipient is not enrolled with a managed care organization; or
2. The managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 7. Physician Assistant Services. (1) Except for a service limitation specified in subsection (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

- (a) The service meets the requirements established in Section 3(1) of this administrative regulation;
- (b) The service is within the legal scope of certification of the physician assistant; and
- (c) ~~The service is billed under the physician's individual provider number with the physician assistant's number included; and~~

~~(d)]~~ The physician assistant complies with:

1. KRS 311.840 to 311.862; and
2. If applicable, Section 2(1)(b) of this administrative regulation.

(2) A same service performed by a physician and either a physician assistant or an APRN on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

- (a) A physician noncovered service specified in Section 4(10)[4(8)] of this administrative regulation;
- (b) An anesthesia service;
- (c) An obstetrical delivery service; or
- (d) A service provided in assistance of surgery.

Section 8. Behavioral Health Services Covered Pursuant to 907 KAR 15:010. The requirements and provisions established in 907 KAR 15:010 for a service covered pursuant to this administrative regulation and 907 KAR 15:010 shall apply if the service is provided by:

- (1) A physician who is the billing provider;
- (2) A provider group that is the billing provider; or
- (3) A behavioral health practitioner under supervision who works for a:

- (a) Physician who is the billing provider; or
- (b) Provider group that is the billing provider.

Section 9.~~[No]~~ Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' services program.

Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A provider that chooses to use electronic signatures shall:
- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
 - (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
 - (c) Provide the department, immediately upon request, with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 12. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 13. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 14. Appeal Rights. An appeal of a department decision regarding:

(1) A Medicaid recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010. [Section 15. Incorporation by Reference. (1) The "Physician Injectable Drug List", February 21, 2014, is incorporated by reference.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort,

Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including adding definitions of "physician administered drug" or "PAD" and "rebateable"; deleting the definition of "physician injectable drug"; providing that a drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010; and deleting the incorporation by reference of the Physician Injectable Drug List. Additionally, the amendment amends the definition of "behavioral health practitioner under supervision" to match the definition established in 907 KAR 15:005; provides that direct physician contact between the billing physician and recipient shall not be required for an in office lab; deletes coverage provisions for a sleep disorder service performed in an independent diagnostic testing facility, leaving coverage for sleep disorder services performed in a hospital or in a sleep laboratory that meets specific criteria; adds to the list of procedures requiring prior authorization by the department for a recipient who is not enrolled with a managed care organization an organ transplant in accordance with 907 KAR 1:350; and deletes the requirement that a service provided by a physician assistant in common practice with a Medicaid-enrolled physician be billed under the physician's individual provider number with the physician assistant's number included. Finally, the amendment corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to follow the coverage provisions established in 907 KAR 23:010 for drugs listed on the Physician Administered Drug List and they will need to obtain prior authorization for organ transplants for a recipient who is not enrolled with a managed care organization in accordance with 907 KAR 1:350.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 438.2, 440.50, 447.10, 447.200-447.205, 447.325[447-Subpart-B], 42 U.S.C. 1395m,

1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Community mental health center" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.

(4) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "Biological" means the definition of "biologicals" pursuant to 42 U.S.C. 1395x(t)(1).

(5) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5)(6) "Department" means the Department for Medicaid Services or its designee.

(6) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203. "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(9) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(10) "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(11) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1.:

(a) Requires little[few] additional[physician] resources; or

2. (b) Is clinically integral to the performance of the primary procedure.

(12)(14) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(13)(12) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(14)(13) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(15) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(16)(14) "Medicaid Physician Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, that:

(a) Contains the[ef] current reimbursement rates for physician services established by the department in accordance with[Section 3-ef] this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(17) "Medical direction" means a service provided:

(a) Under direct orders from a physician who is:

1. Not physically present with the recipient during the provision of the service; and

2. Communicating with the service provider during the provision of the service; or

(b) Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.

(18)(15) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19)(16) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20)(17) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other[one another] during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered out-patient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23)(18) "Physician assistant" is defined by[ia] KRS 311.840(3).

(24)(19) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(20) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least:

(a) Two (2) individually licensed physicians who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid provider number; or

(b) One (1) physician and at least one (1) APRN who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid provider number.

(26)(24) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that which takes into consideration the physician's work, practice expense, and liability insurance.

(27)(22) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical

school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29)[(23)] "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30)[(24)] "Usual and customary charge" means the uniform amount that[which] a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The[A] physician;

1. In a provider group[practice] enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 10 of this administrative regulation[subsections (3) to (9) of this section], reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with[Section 3—of] this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor. (1) Except for a service specified in Sections 4 through 9 of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services.[(4)] Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier.[(5)] If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) follows:

(a) ~~second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;~~

(b) A professional component of a service reported by the addition of the two (2) digit modifier "26" [twenty-six (26)] shall be reimbursed at the product of:

(a)[4-] The Medicare value assigned to the physician's work; and

(b)[2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3)[;-(e)] A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a)[4-] The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b)[2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4)[;-(d)] A bilateral procedure reported by the addition of the two (2) digit modifier "50"[fifty-(50)] shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5)[;-(e)] An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80"[eighty-(80)] shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6)[;-(f)] A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6"[Q-six (6)] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7)[;-(g)] An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner[consulting medical specialist] in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8)[;-(h)] A level II national [HCPCS-(healthcare common procedure coding system)] modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1)[(7)] Except for a service specified in paragraph[paragraphs] (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2)[(8)] Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, Oral Surgery-Related Anesthesia, and Anesthesia Under Medical Direction. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

(c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge; or
(e) For an additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) \$150; or

(b) The actual billed charge.

(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.

Section 8. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 9. Physician Assistant. (1) Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

(2) Reimbursement for a covered service provided by a physician assistant shall be included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, federally qualified health center look-alike, rural health clinic, or community mental health center (9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit beginning after 5 p.m. Monday through Friday or beginning after 12 p.m. on Saturday or anytime Sunday.

Section 3. Reimbursement Methodology. (1) Except for a service specified in subsections (3) through (7) of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.

(3) For the following services, reimbursement shall be the lesser of:

(a) The actual billed charge;

(b) A fixed fee of three (3) dollars and thirty (30) cents for:

1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or

2. Administration of a flu vaccine;

(c) For delivery related anesthesia services, a fixed rate described as follows:

1. Vaginal delivery, \$215;

2. Cesarean section, \$335;

3. Neuroaxial labor anesthesia for a vaginal delivery or cesarean section, \$350;

4. Additional anesthesia for cesarean delivery following neuroaxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;

5. Additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia shall be twenty-five (25) dollars;

(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) or over age seventy (70); or

(e) A fixed rate of \$150 for deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon.

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent or the actual bill charge, or the actual billed charge if the drug is administered in a physician's office.

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that:

1. Is not typically self-administered;

2. Is not excluded as a noncovered immunization or vaccine; and

3. Requires special handling, storage, shipping, dosing or administration.

(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement in an amount that is:

(a) The same rate it reimburses for these drugs provided to Medicaid recipient; and

(b) Reduced by the amount of the third party obligation.

(6) Reimbursement for a covered service provided by a physician assistant shall be:

(a) Made to the employing physician; or

(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)(a) Except for an item identified in paragraph (b) of this subsection or subsection (5) of this section, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in subsection (5) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent or the actual billed charge, if the drug is administered in a physician's office by a physician assistant:

1. Rho (D) immune globulin injection;

2. An injectable antineoplastic drug;

3. Medroxyprogesterone acetate for contraceptive use, 150 mg;

4. Penicillin G benzathine injection;

5. Ceftriaxone sodium injection;

6. Intravenous immune globulin injection;

7. Sodium hyaluronate or hylan G-F for intra-articular injection;

8. An intrauterine contraceptive device;

9. An implantable contraceptive device;

10. Long acting injectable risperidone; or

11. An injectable, infused or inhaled drug or biological:
a. Is that not typically self-administered;
b. Is not excluded as a noncovered immunization or vaccine;
and
c. Requires special handling, storage, shipping, dosing or administration].

Section 10. Reimbursement Limits and Related Requirements.

~~(1)(a) Except for 4. Reimbursement Limitations. (1)(a) With the exception of~~ chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year~~[twelve (12) months]~~.

(b) ~~A~~Any claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

(a) Injections per date of service; and

(b) Dates of service per six (6) month period~~[per recipient]~~.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service; and

(c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery;
and

(d) ~~A preoperative consultation performed within two (2) days of the date of the surgery]~~.

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4)~~[limited to two (2) per ninety (90) day period for the same injury or condition]~~.

~~(6)[Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:~~

~~(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;~~

~~(b) The initial cast or splint applied during or following the surgical procedure; and~~

~~(c) A replacement cast or splint needed as a result of the surgical procedure if:~~

~~1. Provided within ninety (90) days of the procedure by the same physician; and~~

~~2. Applied for the same injury or condition.~~

~~(7)] Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:~~

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

~~(7)](8)] When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.~~

~~(8) The department shall not reimburse for an evaluation and management CPT code unless:~~

~~(a) Direct physician contact occurred during the visit; or~~

~~(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).~~

Section 11. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions~~[(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician].~~

Section 12~~[5]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 10~~~~[4] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:~~

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;

2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital or pediatric teaching hospital; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university teaching hospital or pediatric teaching hospital with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or

2. By a resident working under the supervision of the medical school faculty physician~~[employed by a state-supported school of medicine that is part of a university health care system that includes a:~~

~~(a) Teaching hospital; and~~

~~(b) Pediatric teaching hospital].~~

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b)[shall] Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 13. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 14. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 15. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services approval for the reimbursement.

Section 16[6]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method of reimbursement for physicians' services by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the method of reimbursement for physicians' services by the Medicaid Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting definitions of terms no longer used ("average wholesale price", "AWP", and "biological"); adding definitions of "physician administered drug" or "PAD" and "rebateable"; deleting provisions regarding the reimbursement of drugs; and specifying that reimbursement for physician

administered drugs shall be in accordance with 907 KAR 23:020. Additionally, the amendment updates the definitions to define terms currently used in the administrative regulation; clarifies the standard reimbursement to state that reimbursement for a covered service shall be made to the individual participating physician or the physician in a provider group who provided the covered service; and reorganizes the administrative regulation for clarity by re-arranging the order of provisions. The amendment also establishes that a service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service; specifies that a laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code; clarifies the reimbursement limitations for vaccines administered to a Medicaid recipient under age nineteen (19) in order to comply with 42 U.S.C. 1396s; deletes the reimbursement rate for after-hours office visits because after hour codes are now used under CPT and HCPCS codes; and removes a preoperative consultation performed within two (2) days of the date of the surgery from inclusion in the reimbursement for a surgical procedure. Further, the amendment provides that reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104; establishes limitations for reimbursement of evaluation and management service codes; and revises criteria for supplemental payments to a medical school faculty physician. Lastly, the amendment adds regulatory boilerplate language that an MCO is not required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation and that reimbursement is contingent upon federal approval and federal financial participation; and it corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program reimbursement provisions and requirements relating to physicians' services.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program reimbursement provisions and requirements relating to physicians' services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to follow the reimbursement provisions established in 907 KAR 23:020 for drugs

listed on the Physician Administered Drug List and they will receive reimbursement based on the amended provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid Program; Covered Outpatient Drugs; Final

Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 199.011(3)(2), (4), (9), 199.462, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020(7)(6), (8), 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 199.011(3)(2) and 600.020(7)(6).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9)(8);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(6) "Fictive kin" is defined by KRS 199.011(9).

(7) "Parent" is defined by 42 U.S.C. 675(2).

(8)(7) "Reasonable efforts" is defined by KRS 620.020(11).

(9)(8) "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(10)(9) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's home if:

(a) An emergency custody order has been obtained pursuant to KRS 620.060;

(b) A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(c).

(3) Upon removal of a child from the child's home, placement shall be:

(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

(b) Closest in proximity to the child's home, in accordance with KRS 199.801.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers; and

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative or fictive kin placement is in the best interest of

the child, the cabinet shall:

(a) Use an absent parent search to locate a relative;

(b) Discuss with the relative or fictive kin the option to pursue approval as a foster parent in accordance with 922 KAR 1:350 and document the relative's decision or fictive kin's decision in the case file using the Relative and Fictive Kin Caregiver Agreement.

1. A relative's decision or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

2. If a relative or fictive kin declines to pursue approval as a foster parent prior to accepting custody of a child, the relative or fictive kin shall not have another opportunity to pursue being a foster parent at a later time in the child's placement due to ineligibility under 42 U.S.C. 672;

(c) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abuse head trauma in accordance with KRS 199.462;

(d) Provide information to the relative and fictive kin on how to recognize and report child abuse and neglect;

(e) Conduct background checks on the relative or fictive kin ~~consistent with a caretaker relative~~ pursuant to 922 KAR 1:490; and

(f)(e) Complete a home evaluation with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12) applies;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110; and

(v) Unsupervised contact with the birth parent; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(7) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.

(8) A relative or fictive kin who accepts custody of a child removed from the child's home of origin by a court shall not be entitled to reimbursement in accordance with 922 KAR 1:350, Section 10.

(9) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the DPP-1281, Family Case Plan.

(10)(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(11)(9) Concurrent planning shall be considered:

(a) During development of the case permanency plan; and

(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child who has been removed from the child's home of origin by a court ~~in the custody of the cabinet~~ shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

(b) Adoption;

(c) Permanent relative placement;

- (d) Legal guardianship; or
- (e) Another planned permanent living arrangement[; ~~or~~
- (f) Emancipation].

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court[~~in the custody of the cabinet~~] is returned to the parent if the cabinet determines:

- (a) A family has made sufficient progress toward completing the case permanency plan; and
 - (b) Return to the parent is in the best interest of the child.
- (2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

- (a) A change in the permanency goal; ~~or~~
- (b) Termination of parental rights; or
- (c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

- (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
- (b) The cabinet pursues involuntary termination of parental rights:
 1. Pursuant to KRS 625.090; or
 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

- (a) A relative or fictive kin placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and
2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court[~~in the custody of the cabinet~~] shall be permanent custody[relative placement] if:

- (1) Return to the parent is not in the child's best interest; and

(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child who has been removed from the child's home of origin by a court[~~in the custody of the cabinet~~] shall be legal guardianship if the cabinet determines that:

(a) Return to the parent or adoption is not in the child's best interest;

(b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and

(c) Legal guardianship by the adult identified in paragraph (b) of this subsection[~~(1)(b) of this section~~] is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Another Planned Permanent Living Arrangement.

(1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 10.[~~Emancipation.~~] (1) ~~The permanency goal for a child in the custody of the cabinet shall be emancipation when:~~

~~(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;~~

~~(b) The child is age sixteen (16) or older; and~~

~~(c) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.~~

~~(2) If emancipation is established as a permanency goal, the child shall be referred to an independent living program administered by the cabinet.~~

~~Section 11.] Permanency Services.~~ (1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court[~~in the custody of the cabinet~~] so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(c) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(d) Post-adoption placement stabilization services as described in 922 KAR 1:530; or

(e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative or fictive kin placement may include:

1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; ~~or~~

4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available; or

5. The Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 11[42]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-1281, Family Case Plan", 11/16; and

(b) "Relative and Fictive Kin Caregiver Agreement", 7/17[~~is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for

Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017
FILED WITH LRC: June 29, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov.; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for foster care and adoption permanency services that are mandated by federal and state laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements 2017 Ky. Acts ch. 10, which authorizes the placement of children removed from their homes with origin by the cabinet with fictive kin, and clarifies reimbursements for the child's care. Additionally, the amendment removes emancipation as a permanency goal for a child placed outside of the home of origin. According to the Court of Justice, emancipation is not a legally available permanency option for children due to a lack of statutory authority. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the 2017 Ky. Acts ch. 10, clarify reimbursement policies for children, and make corrections to the permanency services per inputs from the Court of Justice.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding fictive kin as a permanency option for children removed from their homes of origin by the cabinet, clarifying reimbursement policies for children, and making corrections per inputs from the Court of Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes through its conformity and alignment with state laws applicable to permanency services offered through the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 7, 2017, there were 8,375 children in foster care who are served by a variety of foster care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will allow fictive kin as a placement option for children who are removed from their homes of origin. The processes for fictive kin will be similar, though not identical, to the processes for relatives.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fictive kin will have the option of accepting a child for placement and pursuing approval as a foster/adoptive parent. There is no new or additional cost being forced upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow the cabinet to place children removed from their homes of origin with fictive kin, a caregiver with whom the child has a significant emotional bond. The ability to place with fictive kin will prevent some children from being placed in the custody of the cabinet and/or with a provider who is otherwise a stranger to the child. The use of fictive kin may also allow some children to remain in the children's communities and schools of origin. Fictive kin has been found as more stable and less traumatizing placement type for children removed from their homes of origin in other states.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial implementation costs to the administrating agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E (of the Social Security Act) funds, the federal Temporary Assistance for Needy Families Block Grant (TANF), the federal Social Services Block Grant (SSBG), restricted funds derived from Medicaid, and State General Funds are the funding sources for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C.

621-629m, 670-679c, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.467, 620.180

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.467, 620.180, 45 C.F.R. 1355 - 1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:320. Service appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(28), (46)[(44)], 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and [through] 5 [until April 1, 2017, and Chapters 1, 3, and 5 effective April 1, 2017].

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2) and 922 KAR 1:050[~~State-funded adoption assistance~~]; or

(b) KRS 199.557 and 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~].

(2) "Adult" is defined by KRS 209.020(4)[~~or 209A.020(4)~~].

(3) "Caretaker relative" means a relative[~~-(a)~~] with whom a child is, or will be, placed by the cabinet[~~and~~]

(b) ~~Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130, Kinship Care Program~~.

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.

(5) "Case plan" means a plan described in 922 KAR 1:430[~~Child Protective Services In-home Case Planning and Service Delivery~~], for a child who remains in the home.

(6) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(7)[~~"Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.~~

(8)] "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397.

(8)[(9)] "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(9)[(10)] "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence[~~protective, or child care~~] services to the public through a contract or agreement with the cabinet.

(10) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11) "General adult services" means a voluntary preventative service in accordance with 922 KAR 5:090[~~General adult services~~].

(12) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13) "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130[~~Kinship Care Program~~].

(14) "Parent" is defined by KRS 600.020(46)[(44)] and 42 U.S.C. 675(2) for child welfare benefits and services.

(15) "Protective services" is defined by KRS 209.020(5)[~~or 209A.020(5)~~]. [(16) "Registered child care provider" means a child care provider registered in accordance with 922 KAR 2:180.]

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12[44]; or

2. 922 KAR 1:430, Section 4[4]; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan[.] or case permanency plan;
 3. Provide or refer for services as specified in the case plan or case permanency plan; or
 4. Meet ~~a[the]~~ mandated ~~timeframe[time-frames]~~ for child protective services specified in 922 KAR 1:330.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050[~~State-funded adoption assistance~~], or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~]; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050[~~State-funded adoption assistance~~], or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~];

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050[~~State-funded adoption assistance~~], or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~]; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350[~~Family preparation~~], unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055[~~Hearings and appeals~~].

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or

2. Protective services for an adult.

~~(8) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing for the denial, reduction, suspension, or termination of benefits pursuant to 922 KAR 2:160, Section 17.~~

~~(9) An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with:~~

~~(a) This administrative regulation; or~~

~~(b) Effective April 1, 2017, 922 KAR 2:260.~~

~~(10) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and[through] 5 expressly permits the appeal of a cabinet action or alleged act.~~

~~(9)[(14)] A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:~~

~~(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and[through] 5; or~~

~~(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and[through] 5.~~

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310[~~or~~]

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

3. A caretaker relative's or fictive kin's ineligibility for reimbursement in accordance with 922 KAR 1:140, Section 3(8); or

4. Approval of an individual seeking to be a relative or fictive kin placement if the individual fails to meet provisions of 922 KAR 1:140, Section 3(6);

(f) Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(g) Removal of a child from a foster home, relative caregiver, or fictive kin for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140[~~Foster care and adoption permanency services~~]; or

2. Uniting or reuniting the child with a sibling at the next placement;

(h) Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;

(i) Closure of a foster or adoptive home according to the terms of the contract between the cabinet and the foster or adoptive home;

(j) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;

(k) The per diem rate of reimbursement paid to a foster home parent; or

(l) Decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9) for enrollment in specialized training as a medically complex foster parent or care plus foster parent.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, fictive kin, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or
2. Pursuant to paragraph (a) of this subsection.

(2) A child who is under the age of eighteen (18) and is in the custody of the cabinet or has extended commitment to the cabinet in accordance with KRS 610.110(6), or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman for any of the following:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or
2. 922 KAR 1:430, Section 4; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;
2. Complete a case plan or case permanency plan;
3. Provide or refer for services as specified in the case plan or case permanency plan; or
4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330.

(3) A child described in subsection (2) of this section may file a complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.

(4)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The service region administrator or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and
2. Notice of the extension is provided to the complainant.

(5)[(3)](a) A parent, caretaker relative, kinship caregiver, fictive kin, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection (4)[(2)] of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and
2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(6)[(4)] The department shall compile data regarding service

complaints to:

- (a) Fulfill federal and state reporting requirements; and
- (b) Use for program development and evaluation.

Section 5. Other Appeals~~[Appeal of a Child Abuse or Neglect Investigative Finding]~~. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480~~[Appeal of child abuse and neglect investigative findings]~~.

(2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy off~~[-(a)]~~ the DPP-154, Protection and Permanency Service Appeal Request, to an individual:

(a)[1-] At each case planning conference;

(b)[2-] Upon denial, reduction, modification, suspension, or termination by the cabinet of:

1.[a-] Child welfare services provided by the cabinet;

2.[b-] General adult services or protective services, if notification does not present a risk of harm to the victim;

3.[c-] Adoption assistance; or

4.[d-] Other federally-funded program benefit described in 922 KAR Chapter 1~~[-3-]~~ or 5; or

(c)[3-] Upon determination that a student is not eligible for a tuition waiver or education and training voucher~~[-or~~

~~(b) Until April 1, 2017, the DCC-88, Child Care Service Appeal Request, to an individual:~~

~~1. Upon the denial, reduction, or termination of child care assistance;~~

~~2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:~~

~~a. Withdrawal or denial of child care registration application, not at the request of the applicant; or~~

~~b. Revocation or closure of a registered child care provider, not at the request of the provider;~~

~~3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:~~

~~a. 922 KAR 2:170, STARS for KIDS NOW Program for Type I licensed child care centers; or~~

~~b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child care homes; or~~

~~4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.]~~

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail:

(a) the DPP-154A, Protection and Permanency Notice of Intended Action;

~~(b) Until April 1, 2017, the DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or~~

~~(c) Notice in accordance with 922 KAR 2:160, Section 11.]~~

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or
2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or
2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 10 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

(a) Section 4 of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from

Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph[subparagraph].

(d) The contract agency shall abide by the commissioner's written determination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~"DCC-88, Child Care Service Appeal Request", 2016;~~

(b) [~~"DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 2016;~~

(c)] "DPP-154, Protection and Permanency Service Appeal Request", 11/09; and

(b) [(d)] "DPP-154A, Protection and Permanency Notice of Intended Action", 11/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to appeals and complaints for benefits and services under Title 922 KAR Chapters 1 and 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing complaint and appeals procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures related to service appeals and complaints for services and benefits under Title 922 KAR Chapters 1 and 5.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by removing all references to Title 922 KAR Chapter 2 governing child care (a.k.a., day care). In addition, the amendment makes changes for congruency with 2017 Ky. Acts ch. 10 and related administrative regulations. The amendment provides an avenue for a child in the cabinet's custody to wage complaint through a process independent from the child's cabinet worker or service provider(s). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure congruency with 922 KAR 2:260 governing child care service appeals and 2017 Ky. Acts ch. 10 allowing fictive kin as a placement type. The amendment is also necessary to ensure a child in the custody of the cabinet has his or her personal rights and welfare protected through an avenue of complaint independent from the child's cabinet worker or direct service provider(s).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating service appeal and complaint procedures congruent with recently enacted legislation and administrative regulation and ensuring children in the custody have a means to complain independent from the child's cabinet worker or service provider(s).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes through its technical and conforming changes and through its inclusion of a new complaint procedure for children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services are entities impacted by this administrative regulation, which governs service appeals and complaints for Title 922 KAR Chapters 1 and 5. In State Fiscal Year 2016, the cabinet conducted over 30,000 investigations of vulnerable adult maltreatment, and over 55,000 investigations of child maltreatment. A child who is under the age of eighteen (18) and in the custody of the cabinet, who has extended the child's commitment to the cabinet, or who has aged out of the cabinet's custody within the previous twelve (12) months will be newly affected by the amendment to this administrative regulation. On June 4, 2017, the cabinet had 8,527 children in foster care.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A child, as described in item 3, who is aggrieved by an action or inaction on the part of the cabinet, may file a complaint through the cabinet's Ombudsman's Office as an alternative to complaining to the child's cabinet worker or service provider(s). This allows an alternative and independent avenue for complaint to better protect the child's rights and welfare. No other new action is being applied to regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities affected by the amendment to

this administrative regulation will not incur any costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The children identified under item 3 will have an avenue for service complaint different from and independent from the children's cabinet workers or service providers to ensure the children's rights and welfare are protected. Regulated entities will also benefit from the improved clarity and technical corrections provided through the amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Title IV-E (of the Social Security Act) funds, and General Fund dollars are utilized to support the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010(2), 194A.050(1), 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:330. Child protective services.

RELATES TO: KRS 13B.050, 13B.120, 13B.140, 13B.150, 159.140, 194A.005(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 529.010(5), (13), 600.010, 600.020, 605.090(3), 605.130, 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. In addition, 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or ~~family-in-need-of-services~~ assessment of abuse, neglect, or dependency.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7)(6).

(2) "Caretaker" means a parent, guardian, or other person exercising custodial control or supervision of a child.

(3) "Child fatality" is defined by KRS 211.684.

(4) "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child. ~~[(4) "Family-in-need-of-services assessment" or "FINSA" is a process of collecting information and evaluating risk factors to determine if a family is in need of child protective services.]~~

(5) "Human trafficking" is defined by KRS 529.010(5).

(6) "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with an:

(a) ~~[An]~~ Investigation; or

(b) Assessment ~~[A FINSA]~~.

(7) "Investigation" means a process of collecting information and evaluating risk factors to determine if a child:

(a) Has been abused or neglected; or

(b) Is dependent.

(8) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(9) "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by ~~[in]~~ KRS 600.020(1).

(10) "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

(11) "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

~~[(12)]~~ ~~[(9)]~~ "Sexual abuse" is defined by KRS 600.020(61) ~~[(56)]~~.

~~[(13)]~~ ~~[(40)]~~ "Sexual exploitation" is defined by KRS 600.020(62) ~~[(57)]~~.

~~[(14)]~~ ~~[(44)]~~ "Social service worker" is defined by KRS 600.020(58).

~~[(12)]~~ "Substantiated" means:

(a) An admission of abuse, neglect, or dependency by the person responsible;

(b) A judicial finding of child abuse, neglect, or dependency; or

(c) A preponderance of evidence exists that abuse, neglect, or dependency was committed by the caretaker.

~~[(15)]~~ ~~[(43)]~~ "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

~~[(16)]~~ ~~[(44)]~~ "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse, neglect, or dependency.

~~[(17)]~~ ~~[(45)]~~ "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2. A Report of Child Abuse, Neglect, or Dependency.

(1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, or human trafficking as much information about the child's circumstances ~~[.]~~ as possible, including:

1. Specific information as to the nature and extent of:

a. Abuse, neglect, or dependency; or

b. Human trafficking;

2. The cause of the abuse, neglect, or dependency;

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) and (3).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an investigation or assessment[a-FINSA] an anonymous report that provides sufficient information regarding an incident involving a child and alleged:

1. Abuse, neglect, or dependency perpetrated by a caretaker; or
2. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment[FINSA] for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking, but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment[FINSA], the cabinet shall:

- (a) Not accept the report for investigation or assessment[FINSA];
- (b) Refer the caller to a community resource that may meet family needs if available; and
- (c) Keep a record of the report[.] in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment[FINSA]. The cabinet shall:

- (a) Investigate or conduct an assessment[a-FINSA] upon the receipt of a report of physical abuse, if the report alleges:
 1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally[~~nonaccidentally~~] by a caretaker;
 2. Physical abuse if no current observable injury is seen;
 3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or[and] back; or
 4. [a.] Physical injury to a child, as defined by KRS 600.020(46), that is the result of an altercation between the child and the caretaker.[b.] The cabinet shall explore the following:
 - a.[~~(i)~~] Age of the child;
 - b.[~~(ii)~~] Precipitating factors;
 - c.[~~(iii)~~] Degree of appropriateness of force used by the caretaker; and
 - d.[~~(iv)~~] Need for further services to assist in eliminating violent behavior in the home;
- (b) Investigate or conduct an assessment[a-FINSA] upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:
 1. Hygiene neglect if:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;
 2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
 3. Food neglect if a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration; or
 - c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;
 4. Clothing neglect if a child suffers from:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the

elements;

5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect if the:

- a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
- b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;

7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:

- a. Be life-threatening;
- b. Result in permanent impairment;
- c. Interfere with normal functioning and worsen; or
- d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;

8. At risk of harm due to an act described at KRS 600.020(1), if a child is:

- a. Born exposed to drugs or alcohol, as documented by a health care provider pursuant to:
 - (i) 42 U.S.C. 5106a(b)(2)(B)(ii); and
 - (ii) KRS 620.030(2);
- b. Involved in an incident of domestic violence;
- c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;
- d. In a situation if the factors provided in a report indicate that:
 - (i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or
 - (ii) The child exhibits physical or behavioral indicators of sexual abuse; or
- e. In a situation where the circumstances are such that a child is likely to be physically abused; or

9. Exploitation neglect if the:

- a. Caretaker has used a child or child's financial resources for personal gain;
- b. Caretaker has enticed a child to become involved in criminal activities; or
- c. Child is a victim of human trafficking;

(c)[4-] Receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker.[2-] An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease;

(d) Receive and investigate or complete an assessment[a-FINSA] upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(19); and

(e) Investigate or complete an assessment[a-FINSA] upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(25).

(5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or assessment[FINSA]:

- (a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or over at the time of the report;
- (b) There is insufficient information to locate the child or to explore leads to locate;
- (c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;
- (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
- (e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, or dependency;
- (f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial risk of harm;
- (g) The report concerns a newborn infant abandoned pursuant to KRS 620.350; or
- (h) An allegation of spouse abuse to a married youth under the

age eighteen (18).

(6) ~~A report of spouse abuse to a married youth under the age of eighteen (18) shall be forwarded to cabinet staff for action pursuant to 922 KAR 5:102.~~

(7) A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:

- (a) Provides foster, pre-adoptive, or respite care services for a child in the custody of the cabinet; and
- (b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350.

Section 3. Initial Investigation or Assessment[FINSa]. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the immediate safety and risk of harm to a child.

(2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, or dependency:

- (a) Includes a child who is:
 - 1. The alleged victim of a fatality or near fatality; or
 - 2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or
- (b) 1. Involves a child who is:
 - a. Under four (4) years of age; or
 - b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and
- 2. Indicates a high risk of harm to the child due to:
 - a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;
 - b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation;
 - c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:
 - (i) Perpetrator has access to the child; or
 - (ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, or dependency:

- (a) 1. Indicates a high risk of harm to the child; or
- 2. Alleges the child is the victim of human trafficking; and
- (b) Criteria of subsection (2) of this section are not met.
- (4) If the report of child abuse, neglect, or dependency indicates a moderate risk of harm to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, or dependency indicates a low risk of harm to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report. ~~An investigation shall be initiated within one (1) hour of the report if the report indicates:~~

- (a) ~~Child abuse, neglect, or dependency that places a child in imminent danger;~~
- (b) ~~Human trafficking of a child; or~~
- (c) ~~Sexual abuse of a child.~~
- (3) ~~If the report of child abuse, neglect, or dependency indicates nonimminent danger of physical abuse, efforts shall be made to have face-to-face contact with the child and family within twenty-four (24) hours.~~

(4) ~~If the report of child abuse, neglect, or dependency indicates nonimminent danger, not involving physical abuse, efforts shall be made to have face-to-face contact with the child and family within forty-eight (48) hours.~~

(5) ~~An investigation or a FINSa shall be initiated within forty-eight (48) hours of receipt of the report of dependency, if a child is not in imminent danger.]~~

(6) Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the child's parent, guardian, or person exercising custodial control in accordance with KRS 620.072 ~~Unable to locate shall be~~

~~documented in the investigative or family-in-need-of-services narrative].~~

(7) Cabinet staff shall incorporate an unannounced home visit in accordance with provisions in KRS 620.072.

(8) ~~Cabinet staff~~ The social service worker shall advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).

(9) ~~(8)~~ A written assessment shall:

- (a) Be completed by the cabinet on every investigation or assessment ~~and FINSa~~; and
- (b) Document efforts if the cabinet is unable to locate the family.

(10) ~~(9)~~ The cabinet shall provide or make a referral to any community-based ~~community-based~~ service:

- (a) Available to a child, caretaker, or a child's family:
 - 1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or
 - 2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and
- (b) Necessary to:
 - 1. Reduce risk to a child; and
 - 2. Provide family support.

(11) ~~(40)~~ The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.

(12) ~~(44)~~ (a) The cabinet may develop a Prevention Plan at any point during an investigation or assessment ~~a FINSa~~ to protect the health and safety of a child.

- (b) The Prevention Plan shall be:
 - 1. Completed in hardcopy;
 - 2. Developed in conjunction with a family and the family's identified support system;
 - 3. Agreed upon by the participants; and
 - 4. Signed by all parties identified to participate in the Prevention Plan ~~prevention plan~~, unless a party is unwilling or unable to sign.

(13) ~~(42)~~ If an investigation or assessment ~~a FINSa~~ is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a Prevention Plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).

(14) ~~(43)~~ Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.

(15) ~~(44)~~ (a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

(16) ~~(45)~~ Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 920 KAR 2:040, in accordance with KRS 620.040(6) and (7).

(17) ~~(46)~~ Pursuant to KRS 620.030(5), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment ~~FINSa~~.

(18) ~~(47)~~ Photographs may be taken of a child or a child's environment during a protective services investigation or assessment ~~FINSa~~ in accordance with KRS 620.050(14).

(19) ~~(48)~~ An interview with a child shall be conducted pursuant to KRS 620.040(6).

(20) ~~(49)~~ (a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).

(b) The cabinet's primary responsibility shall be the protection of the child.

(21) ~~(20)~~ If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

- (a) From law enforcement; or
- (b) Through a request for a court order pursuant to KRS 620.040(5)(a).

~~(22)~~~~(21)~~(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

~~(23)~~~~(22)~~ At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and

(b) Not be the lead investigator in a noncaretaker investigation.~~[(23) In accordance with 42 U.S.C. 5106a(b)(2)(B)(v), the cabinet may refer a child or a child's family to a state or community resource according to the identified need of the child and family.]~~

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18). (1) A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18)~~[-]~~ shall be subject to investigation or assessment~~[a FINSA]~~.

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a) 1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390; or

2. Therapeutic hold applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(A)(x).

(9) If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10) The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).

(11) If a child fatality or near fatality occurs in a licensed facility,

the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

(a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f) Resource home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted[received], the designated cabinet staff shall:

(a) Immediately contact the service region administrator or designee; and

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted[received], cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted[received], cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2. In a joint investigation:

a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Division of Regulated Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e)[(d)] Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7[6]. Interviewing a Child in a School Setting. (1) Pursuant to KRS 620.030(5), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or

~~assessment~~[a-FINSA] at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or ~~assessment~~[a-FINSA] at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8[7]. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is ~~accepted~~[received], the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(14)[(13)] of this administrative regulation;

(3) The findings shall be shared with the custodial parent and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9[8]. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10[9]. Substantiation Criteria and Submission of Findings. (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) and "dependent child" in KRS 600.020(20)[(19)] in determining if an allegation is substantiated.

(2) A finding of an investigation or ~~assessment~~[a-FINSA] shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or ~~assessment~~[FINSA]; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) ~~Cabinet staff~~[A social service worker] may find and substantiate abuse or neglect, or ~~make a services needed finding~~[dependency] at any point during an investigation or ~~assessment~~[FINSA], or prior to case closure and aftercare planning in accordance with Section 12[44] of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

1. Unsubstantiated child abuse or neglect;

2. Substantiated child abuse or neglect;

3. Child fatality or near fatality related to abuse or neglect;

4. Unable to locate the child; or

5. Services needed for the child or child's family.

(b) At the completion of an investigation or assessment involving human trafficking of a child by a non-caretaker, the cabinet shall make a finding of:

1. Confirmed human trafficking;

2. Not confirmed human trafficking; or

3. Unable to locate the child.

(5)[(4)] A cabinet finding shall not be a judicial finding.

(6)[(5)] The cabinet staff's[social service worker's] supervisor or designee shall review and approve the final finding of the investigation or ~~assessment~~[FINSA].

(7)[(6)] A notice of finding[DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter,] and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 3, shall be: (a) sent to the perpetrator by certified mail to the last known address of the perpetrator; or

(b) Given to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice.

(8)[(7)] A notice of finding [DPP-152] shall be:

(a) Sent to the child's parent or guardian by certified mail; or

(b) Given to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

(a) The factual basis for the finding of child abuse or neglect;

(b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11[40]. Appeals. (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

~~(2) If an administrative hearing is held, the secretary of the Cabinet for Health and Family Services or designee shall issue the final order.~~

~~(3) A further appeal may be requested through circuit court in accordance with KRS 13B.140 and 13B.150.~~

~~(4) A person may have additional hearing rights as specified in 922 KAR 1:320.~~

Section 12[44]. Closure and Aftercare Planning. (1) A decision to close a child protective services case shall be based on: ~~(a)~~ evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

~~(a)[4.] Protect the child; and~~

~~(b)[2.] Meet the needs of the child;~~ or

~~(b) A lack of legal authority to obtain court-ordered cooperation from the family.~~

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) A child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4)[(3)] A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5)[(4)] Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6)[(5)] The Aftercare Plan shall be developed upon the completion of an investigation or[family-in-need-of-services] assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)[(6)](a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the Aftercare Plan.

(b) The focus of the Aftercare Plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8)[(7)] The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, 1:410, or 1:430.

(9)[(8)] The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

Section 13[42]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter", 6/04;~~

~~(b)] "Aftercare Plan", 2/04; and~~

~~(b)](c)] "Prevention Plan", 6/04.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing procedures for child protective services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation of assessment of abuse, neglect, or dependency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by making initiation timeframes for a cabinet child protective services investigation more consistent with timeframes of other states or recognized national practice, thereby improving worker safety and the service provision to the child and the child's family. The amendment also incorporates recently enacted legislation, namely Tucker's Law (2017 Ky. Acts ch. 188) regarding the use of unannounced visits and updates consistent with 2017 Ky. Acts ch. 191. The amendment removes the term "family-in-need-of-services assessment" or "FINSAs", which is no longer a track for an

accepted referral for services. The amendment incorporates current provisions of 922 KAR 1:420, governing the investigation of child fatalities or near fatalities, a subset of child protective services investigations. The amendment clarifies and lists the cabinet's findings following an investigation. In addition, the amendment makes substantiation notice requirements for child protective services investigations more consistent with adult protective services practices for perpetrators eligible for the caregiver misconduct registry. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The majority of changes resulting from the amendment to this administrative regulation ensure congruency and compliance with recently enacted legislation, the Red Tape Reduction initiative, business processes embedded in the state's information technology system or already employed within the agency, and other administrative regulations governing the provision of child welfare services. The more substantive change entails the proposed revision of initiation timeframes for child protective services investigations. Currently, Kentucky has some of the most stringent initiation timeframes in the nation, particularly for children at high risk (i.e., one-hour initiation timeframe upon acceptance of the report). A one-hour initiation timeframe is not logistically feasible in many areas of the state due to traffic, limited infrastructure, county size, and geographical features. A one-hour initiation timeframe also inhibits adequate preparations prior to the cabinet worker's initial engagement of the child and family, such as conducting background checks, reviewing prior history with the agency, and securing law enforcement assistance, thereby enhancing worker and child risks and compromising the quality of service provision. A one-hour timeframe also compromises a cabinet worker or team's ability to manage multiple accepted intakes simultaneously. The cabinet's federal funding is further threatened by the more stringent timeframes of present day due to the cabinet's inability to often times comply with the timeframes. A child requiring such immediacy should result in notification to law enforcement and perhaps emergency medical services. The proposed new initiation timeframes resulted from the cabinet's efforts in 2009, including a literature review, technical assistance provided through federal funders, data analysis, child fatality reviews, and comments solicited from child advocacy groups. The work in 2009 was more recently revisited as a part of the cabinet's child welfare reform efforts and included additional inputs made possible through Kentucky's participation in the Three Branch Institute to Improve Child Safety and Prevent Child Fatalities, a unique technical assistance opportunity supported through the National Governors Association, the National Conference of State Legislatures, Casey Family Programs, the National Council of Juvenile and Family Court Judges, and the National Center for State Courts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the statutes through higher quality service provision to vulnerable children and families.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the cabinet's Statewide Child Protective Services Intake Fact Sheet (June 1, 2016, through May 31, 2017), the cabinet received 131,098 intakes with nearly 55,589 meeting acceptance criteria. Of those, 14,514 resulted in a finding of substantiated child abuse or neglect involving 27,296 unique children. Approximately 1,600 resulted in a services needed finding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment's enhancements to the cabinet's provision of services, namely quality initial engagement of the child, the family, and the use of unannounced visits. The amendment may also indirectly benefit staff retention due to the applicable of more realistically feasible and manageable initiation timeframes benefiting the safety of the child being served, the cabinet worker(s) involved, and worker performance and outcomes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 1:430. Child protective services in-home case planning and service delivery.

RELATES TO: KRS 600.010, 600.020, 605.130, 620.050(3), 620.072, 42 U.S.C. 620-629m, 1397-1397h, 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1)[194B.050(1)] requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Health and Family Services, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. This administrative regulation establishes cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency[.] in compliance with KRS 605.130.

Section 1. Definitions. (1) "Cabinet" is defined by[at] KRS 600.020(7)[(6)].

(2) "Case planning" means a process during which[where] the cabinet works with the family and other involved parties to identify conditions within a family, which may cause the threat of harm to a child and that need to be changed, and the services necessary to bring about familial changes in order to facilitate a child's safety and well being in the home environment.

(3) "Permanency goals" means the goals for permanency established by[are described at] 922 KAR 1:140, Section 4.[(4)] "Prevention plan" means a set of specific strategies and behaviors the family or individual intends to practice in order to prevent reoccurrence of an abusive or neglectful situation[.]

Section 2. In-Home Case Planning. (1) If the cabinet has determined that a child shall remain in the home, the cabinet shall review the results of the investigation[, or of the family in need of services] assessment conducted pursuant to 922 KAR 1:330[, Section 3(12)(a)1 and 2,] to include:

- (a) Reviewing the case history;
- (b) Initiating contact with a family;
- (c) Completing a case plan[P&P-1282, Family Case Plan,] with input from the family and community supports,[if parents agree] pursuant to 922 KAR 1:140, Sections 3 and 5; and
- (d) Completing a Prevention Plan in accordance with 922 KAR 1:330[CPS prevention plan], if indicated, with input from family and community supports.

(2) An assessment[The Continuous Quality Assessment (CQA)] shall be completed or reviewed in accordance with 922 KAR 1:330, Section 3(9)[(8)].

(3) Another assessment[The CQA] shall be completed at least every six (6) months prior to each periodic case plan.

(4) The cabinet shall advise a family receiving in-home case planning and service delivery[A DCBS-154, Protection and Permanency Service Appeal Request, shall be mailed or hand delivered to a family, advising them] of the right to a fair hearing in accordance with 922 KAR 1:320.

Section 3. Service Delivery Plan. (1) If a case plan is required, a service delivery plan shall be provided as specified in a family's case plan. A service delivery plan shall encompass:

- (a) Identified expectations of a family and the cabinet; and
 - (b) Initiating linkage to community resources.
- (2) If a child continues to reside in the home of a parent or guardian, the cabinet shall:

- (a) Have face-to-face contact with the family:
 - 1. To evaluate the family's progress; and
 - 2. In accordance with KRS 620.072; and
- (b) Make a monthly in-home, face-to-face visit with the[family and] child to:

- 1. [(a)] Observe the interaction between parent, child, and siblings;
- 2. [(b)] Determine the appropriateness of interactions;
- 3. [(c)] Determine if parenting skills need improvement; and
- 4. [(d)] Identify the protective capacity of the parent.

(3) If the home environment was indicated as an issue in the case plan, an in-home visit to assess the home shall be conducted.

Section 4. Case Closure and Aftercare Planning. (1) A new assessment[CQA] shall be completed before an in-home case is closed.

(2) The decision to close a[~~child protective services assessment or~~] case shall be based on documentation that the original factors resulting in abuse, neglect, or dependency, or the risk of the abuse, neglect or dependency, has been resolved to the extent that the parent or guardian is able to:

- (a) Protect the child; and
 - (b) Meet the needs of the child.
- (3) Consideration for closure of a child protective service case shall[may] occur if the following conditions are met:
- (a) The child is no longer in need of protection; and
 - (b) The case planning or permanency goals have been achieved.

(4) The family shall be:

- (a) Notified in writing of the decision to close the protective services case; and
- (b) Advised[Given a DCBS-154, Protection and Permanency Service Appeal Request, in person or by certified mail, advising] of the right to a fair hearing in accordance[compliance] with 922 KAR 1:320[, Section 2].

(5) If it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop an aftercare plan in accordance with 922 KAR 1:330 by:

- (a) Linking the family to community resources;
 - (b) Continuing preventative measures; and
 - (c) Instructing the family in how to use the aftercare plan.
- (6) The focus of the aftercare plan shall be to prevent a

reoccurrence of child abuse, neglect, or dependency. [Section 5. Incorporation by Reference. (1) "Prevention Plan", edition 11/00, is incorporated by reference.

(2) This material made be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency in compliance with KRS 605.130.

(b) The necessity of this administrative regulation: This administration is necessary to establish cabinet procedures for in-home child protection services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency, in compliance with KRS 605.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in effective administration of the statutes by establishing procedures for in-home child protection services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes outdated incorporated materials and makes technical and conforming changes to align this administrative regulation with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the administrative regulation for congruency with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment made to this administrative

regulation conforms to the content of the authorizing statutes through its update of cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its update of in-home child protective services with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From June 1, 2016, through May 31, 2017, the cabinet made 14,514 findings of substantiated child abuse and neglect. For maltreated children who remain in their homes of origin and whose situation warrants continued cabinet involvement to mitigate risk factors present, the cabinet provides in-home services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is largely technical and conforming in nature. There is no new burden anticipated for regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will impose no new or additional cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment clarifies and updates cabinet procedures for the provision of in-home child protection services benefiting the safety of children who are involved in substantiations of child abuse and neglect or who are at risk for maltreatment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature. There is no new or additional cost projected to the administrative body as a result of this administrative regulation.

(b) On a continuing basis: There is no new or additional cost projected to the administrative body as a result of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 620-629m, 1397-1397h, 5106a
2. State compliance standards. KRS 194A.050(1), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 620-629m, 1397-1397h, 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.150(1), 42 U.S.C. 620-629m, 1397-1397h, 5106a

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for state or local government for the first full year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no new or additional cost projected for the administrative body in the first year as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional cost projected for the administrative body in subsequent years as a result of this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6)(5)], 61.876, 160.151, 160.380, 199.466, 199.896(19), 199.898(1)(a), 403.352, 600.020(1), (40), (61), (62)(54), (65)], 620.050(5)], 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f(2)(A)(viii), (ix), (x)]

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services[secretary] to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities

vested in the cabinet. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts ch. 252 Part 1, H.10(3) authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Child fatality" is defined by KRS 211.684.

(4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(5) "Sexual abuse" is defined by KRS 600.020(61)(54).

(6)(3) "Sexual exploitation" is defined by KRS 600.020(62)(55).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

a. 922 KAR 1:480;

b. 922 KAR 1:320; or

c. 922 KAR 1:330, Section 11(40); or

2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

(a) Remain on the central registry for a period of at least seven (7) years; and

(b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

a. Sexual abuse or sexual exploitation of a child;

b. A child fatality related to abuse or neglect;

c. ~~A near fatality related to abuse or neglect~~~~A criminal conviction related to child abuse or neglect;~~

d. ~~A civil judicial determination related to child abuse or neglect;~~ or

d.[e.] Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490, ~~regarding foster or adoptive services~~.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with ~~KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x)[5106a(b)(2)(A)(viii), (ix), and (x)]~~.

Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required by law, a request for a central registry check may be made by an:

(a) Individual;

(b) Organization; or

(c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

(a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b)1. Applies for initial licensure;

2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or

3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

(a) By submitting to the cabinet:

1.a. ~~(a)] A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or Title 922 KAR Chapter 2; or~~

b. ~~A completed~~~~[form,]~~ DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

(i)~~[1-]~~ The date of employment of an individual required by law to submit to a central registry check; or

(ii)~~[2-]~~ A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2.~~[(b)]~~ A nonrefundable fee of ten (10) dollars:

~~[1-]~~a. ~~(i)~~ Submitted by check or money order; and

~~(ii)~~~~[b-]~~ Made payable to the Kentucky State Treasurer; or

b.~~[2-]~~ Made available through a prepaid account established with the cabinet; or

~~(b) Through another cabinet system, such as the Kentucky National Background Check Program established in accordance with 906 KAR 1:190.~~

(5) A state requesting a child abuse or neglect check from ~~the cabinet~~~~[Kentucky]~~ as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

(2) An individual subject to administrative review in accordance with this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-156, Central Registry Check," 7/17; and

(b) "DCC-374, Child Care Central Registry Check," 7/17~~[edition 02/08, is incorporated by reference]~~.

(3)~~[(2)]~~ This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 922 KAR 1:470

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort,

Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for conducting child abuse and neglect checks of the central registry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation changes the criteria for retaining an individual on the central registry by adding a near fatality related to child abuse or neglect and removing court-related criteria. In addition, this amendment authorizes the cabinet to release information about individuals pending administrative review, which includes being subject to matters still under investigation, assessment, or appeal. The amendment updates material incorporated by reference and adds a form for the exclusive use of child care staff members to request a child abuse and neglect check of the central registry. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to recognize near fatalities of a child related to abuse or neglect warrant retention of an individual on the central registry. In addition, the amendment recognizes criminal background checks as a better source of court-related information. The amendment also allows the cabinet to process child abuse and neglect check requests on individuals who have matters pending with the cabinet, thereby facilitating more timely check processing. The amendment makes necessary updates to facilitate workload distribution in the implementation of legislation enacted during the 2017 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its correction and update of cabinet procedures for child abuse and neglect checks of the central registry.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancement of the cabinet's child abuse and neglect check procedures to support the enforcement of recently enacted legislation mandating more individuals to undergo such checks.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who are subject to statutory and regulatory requirements involving a child abuse and neglect check conducted by the cabinet are impacted by this administrative regulation. From January 1, 2017, through March 30, 2017, the cabinet processed approximately 18,000 child abuse and neglect checks.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will still be required to submit a completed form and fee or go through another cabinet system to request a child abuse and neglect check. However, there will be a form to distinguish child care staff members' requests from other child abuse and neglect check requests. This will ensure that requests from child care staff members are directed to the Division of Child Care for processing and workload division to support timeliness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost being applied to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the clarity and improvements in the processing of child abuse and neglect checks as provided through the amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cabinet will implement this administrative regulation within existing appropriations and revenues.

(b) On a continuing basis: The cabinet will implement this administrative regulation within existing appropriations and revenues.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the cabinet's child abuse and neglect checks is largely derived from the General Funds and the check fee. The database that houses protection and permanency records is also supported through federal Title IV-E (of the Social Security Act) funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee charged by the cabinet for a child abuse and neglect check is remaining unchanged. The fees collected support cabinet programming per the authorizing legislative act.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation enforces a fee established by the General Assembly in 2006 Ky. Acts ch. 252.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for

Health and Family Services is impacted by this administrative regulation. Public school districts are also impacted by this administrative regulation through the statutory mandate for personnel and others on the grounds of a public school to undergo a child abuse and neglect check conducted by the cabinet. Other governmental organizational units that require staff or providers to undergo child abuse and neglect central registry checks, such as the Department of Juvenile Justice or the Department for Medicaid Services, are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3), 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation enforces a legislatively enacted fee for child abuse and neglect checks. The fees collected support cabinet programming per the authorizing legislative act.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation enforces a legislatively enacted fee for child abuse and neglect checks. The fees collected support cabinet programming per the authorizing legislative act.

(c) How much will it cost to administer this program for the first year? The cabinet will implement this administrative regulation within existing appropriations and revenues.

(d) How much will it cost to administer this program for subsequent years? The cabinet will implement this administrative regulation within existing appropriations and revenues.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)**

922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

RELATES TO: KRS Chapter 13B, 13B.010(2), (7), 23A.010, 194A.005(1), 600.020(1), (7)(6), 620.050(5), 45 C.F.R. 205.10, 42 U.S.C. 1320d-1320d-9, 1397-1397e, 5106a(b)(2)(B)(viii), (ix)]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 5106a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. 42 U.S.C. 5106a requires the Secretary of Health and Human Services to make grants for the purpose of assisting states in improving the delivery of child protective services, including procedures for appealing and responding to appeals of substantiated reports of abuse and neglect. In order to maintain continued eligibility after the initial grant application, 42 U.S.C. 5106a requires states to submit a plan every five (5) years thereafter assuring operation of a statewide program related to child abuse and neglect that includes provisions, procedures, and mechanisms by which a perpetrator who disagrees with an official finding of child abuse or neglect may appeal the finding. This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and

neglect investigative findings.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative hearing" is defined by KRS 13B.010(2).

(3) "Appellant" means a perpetrator who requests an administrative hearing or on whose behalf an administrative hearing is requested by the perpetrator's legal representative.

(4) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7)(6).

(5) "Compelling need" means a hearing officer determines that a probability exists by which a child would be unable to reasonably communicate because of emotional distress produced by the perpetrator's presence.

(6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) "Hearing officer" is defined by KRS 13B.010(7).

(8) "Perpetrator" means a person who, as a result of an investigation, has been determined by the cabinet to have abused or neglected a child.

Section 2. Right to Appeal. A person who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's investigative finding through an administrative hearing.

Section 3. Notification and Request for Appeal. (1) The cabinet shall provide to a perpetrator:

(a) Notice of a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:330, Section 10[8]; and

(b) A copy of the ~~DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding~~, ~~form DPP-155, incorporated by reference~~.

(2) The cabinet shall disclose confidential information in accordance with 42 U.S.C. 5106a(b)(2)(B)(viii), (ix) to any federal, state, or local government entity, or an agent of a government entity, that has a need for the information in order to carry out its responsibility under the law to protect children from abuse and neglect.

(3) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the date[-a-] the notice of a substantiated finding of child abuse or neglect is ~~postmarked~~~~mailed~~; or

~~b. Of delivery of the notice if not mailed~~;

(b) Describe the nature of the investigative finding;

(c) Specify the reason the appellant disputes the cabinet's substantiated finding of child abuse or neglect;

(d) Specify the name of each known cabinet staff person involved with the investigation; and

(e) Include a copy of the notice of a substantiated finding of child abuse or neglect if available.

(4)(a) Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the matter:

1. Is not appealable; and

2. May be pursued through the service complaint process ~~established by~~~~described in~~ 922 KAR 1:320, Section 4 or 10.

(5) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

Section 4. Matters Not Appealable Through an Administrative Hearing. (1) The following shall not be subject to review through an

administrative hearing:

- (a) A matter in which a civil court having competent jurisdiction:
 - 1. Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or
 - 2. Is currently engaged in legal proceedings regarding the same issue being appealed;
- (b) A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet's finding of abuse or neglect of a child;
- (c) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;
- (d) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
- (e) Failure to submit a written request for appeal within the time frame established by Section 3(3)(a) of this administrative regulation, unless an appellant demonstrates good cause; or
- (f) An investigation that results in an unsubstantiated finding of abuse or neglect of a child.

(2) If an appellant is denied an administrative hearing in accordance with subsection (1)(a) of this section, the cabinet shall change its investigative finding:

- (a) In accordance with a civil court's finding regarding abuse or neglect; or
- (b) To a services needed finding in accordance with 922 KAR 1:330 and 42 U.S.C. 5106a(b)(2)(B)(v).

Section 5. Investigative Findings. (1) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of child abuse or neglect at any time based upon:

- (a) A review of the cabinet's records; or
 - (b) Subsequent discovery of additional information.
- (2) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of a child, the cabinet shall act in accordance with Section 3(1) and (2) of this administrative regulation.

Section 6. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or its designee shall be held in accordance with KRS Chapter 13B.

(2) The proceedings of an administrative hearing shall be disclosed only in accordance with KRS 194A.060, 620.050, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 42 U.S.C. 5106a, 920 KAR 1:060, 922 KAR 1:470, and 922 KAR 1:510 [by authority of state or federal law].

(3) A hearing officer may, upon a determination of compelling need, permit a child to provide testimony in a manner in which the child is not able to hear or see the appellant.

(4) If a hearing officer orders the testimony of a child to be taken in accordance with subsection (3) of this section, the hearing officer shall permit the appellant to hear the testimony of the child.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

- (a) Each party to the administrative hearing;
- (b) The commissioner of the Department for Community Based Services; and
- (c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

- (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Final administrative action shall be taken, unless waived by an appellant, within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 9. Incorporation by Reference. (1) "DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding", 7/17/6/04, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and neglect investigative findings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the administration of the statutes by establishing cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative

regulation: The amendment to this administrative regulation clarifies that appeals must be received within thirty (30) calendar days of the notice of a substantiated finding of child abuse or neglect's postmark. The amendment also allows the cabinet to continue with voluntary service provision to a family and a child if a court does not uphold the cabinet's substantiated finding of child abuse and neglect, thereby mitigating any remaining maltreatment risk factors for the child. The amendment also make numerous technical corrections for congruency with other child welfare administrative regulations and in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide clarity to regulated entities and to support child safety in cases in which the court did not uphold the cabinet's substantiated finding of child abuse and neglect. The amendment is also necessary to ensure alignment or congruency among child welfare administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification and update of cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its clarification and update of cabinet appeal procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A percentage of all substantiated child abuse and neglect investigative findings result in an appeal request received by the Cabinet for Health and Family Services' Ombudsman's Office, and a percentage of those result in an administrative hearing. The cabinet averages approximately 400 appeal requests annually.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new or additional burden applied to regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new or additional costs borne by regulated entities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit regulated entities through its clarification and update of cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant and Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 5106a

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for state or local government for the first full year it is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 199.011(6), (9)[(7)], 199.462(1), 211.684, 600.020(28), (40), (61), (62)[(55), (56)], 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs[program]. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, [and] a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2) KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative, fictive kin, or kinship caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4)[(3)] "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative, fictive kin, or kinship caregiver; and

(b) Is eighteen (18) years of age or older.

(5)[(4)] "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Family Preparation; or

(b) 922 KAR 1:310, Standards for Child-Placing Agencies.

(6)[(5)] "Caretaker relative" means a relative[-(a)] with whom the child is, or shall be, placed by the cabinet[-; and

(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130].

(7)[(6)] "Child fatality" is defined by KRS 211.684.

(8) "Child-placing agency" is defined by KRS 199.011(6)[(7)].

(9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10)[(7)] "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

(11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(12)[(8)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(13)[(9)] "Sexual abuse" is defined by KRS 600.020(60)[(55)].

(14)[(40)] "Sexual exploitation" is defined by KRS 600.020(61)[(56)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation[National Crime Information Database]; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. (a) Committed sexual abuse or sexual exploitation of a child;

2. (b) Been responsible for a child fatality or near fatality related to abuse or neglect;

3. (c) Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. (d) Had parental rights terminated; or

(b) A matter pending administrative review. An individual subject to administrative review in accordance with this paragraph may submit an open records request in accordance with 922 KAR 1:510.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the

household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
 3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or
- (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

- (1) A completed form, DPP-157, including the fee for a criminal background check; and
- (2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) ~~if[when]~~ a:

- (a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or
 - (b) Request is received on agency letterhead and includes two (2) numeric identifiers.
- (2) The cabinet shall:
- (a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and
 - (b) Waive the fee[requirements] specified in 922 KAR 1:470[; Section 3(4)].

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin. (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:

- (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) ~~[and in accordance with 922 KAR 1:430;]~~ by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
- (b) A child abuse or neglect check conducted by the cabinet;
- (c) An address check of the Sex Offender Registry; and
- (d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation[National Crime Information Database] if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet ~~[in accordance with 922 KAR 1:430]~~.

(3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.

(4) A caretaker relative or fictive kin shall not be approved if ~~a[an in-state]~~ criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated

voluntarily, shall be handled on a case-by-case basis with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event; and
- (c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

- (a) An adolescent member of the household has:
 1. Been found by the cabinet to have abused or neglected a child; or
 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
- (b) An adult member of the household has:
 1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:

- (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
 - (b) A child abuse or neglect check conducted by the cabinet; and
 - (c) An address check of the Sex Offender Registry.
- (2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (d) of this administrative regulation.

(b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

~~(6)[(5)]~~ If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2 ~~(4)~~ or 7 ~~(4)~~ of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

- (a) Applicant;
- (b) Foster or adoptive parent; and
- (c) Adult member of an applicant or foster or adoptive parent's

household.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:

- (a) An applicant's household; or
- (b) A foster or adoptive parent's household.

(3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7(4) of this administrative regulation shall be maintained for each:

- (a) Caretaker relative;
- (b) Kinship caregiver; and
- (c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

- (a) Caretaker relative; or
- (b) Kinship caregiver; or
- (c) Fictive kin.

Section 9. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", 7/17[edition 40/44]; and

(b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", 7/17[edition 40/44].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov.; and Tricia Orme,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, kinship caregivers, fictive kin, prospective foster/adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of background check requirements for out-of-home or foster care providers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds fictive kin to the out-of-home or foster care providers subject to background check requirements in accordance with 2017 Ky. Acts ch. 10. In addition, the amendment changes the criteria for a child abuse and neglect check conducted by the cabinet on a prospective out-of-home or foster care provider by adding a near fatality related to child abuse or neglect. In addition, this amendment clarifies the cabinet's ability to communicate with child-placing agencies and authorizes the cabinet to release information about individuals pending administrative review, which includes being subject to matters still under investigation, assessment, or appeal. The amendment clarifies application of background check requirements on new household members and updates material incorporated by reference, including addressing audit findings from the Federal Bureau of Investigation (FBI). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement recently enacted legislation establishing fictive kin as a placement option for children removed by the cabinet from their homes of origin. In addition, the amendment is necessary to respond to Red Tape Reduction comments received from child-placing agencies or their representative to improve provision of information and timeliness. Lastly, the amendment is necessary to ensure compliance with FBI requirements for continued access to comprehensive criminal background information and to improve child safety in out-of-home or foster care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its necessary updates and corrections to background check requirements of caretaker relatives, kinship caregivers, fictive kin, and foster/adoptive parents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation impacts prospective and existing foster/adoptive parents, relative caregivers, kinship caregivers, and in the near term, fictive kin providers. In addition, child-placing agencies are impacted in their recruitment and approvals of foster/adoptive parents. From January to March 2017, the cabinet processed approximately 6,000 background checks on foster/adoptive parents, caretaker relatives, and kinship caregivers or their household members. As

of May 7, 2017, there were 8,375 children in foster care.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions on the part of caretaker relatives, kinship caregivers, or foster/adoptive parents. Prior to 2017 Ky. Acts ch. 10, fictive kin were not a placement option. Under this administrative regulation, fictive kin will be added to the placement options utilized by the cabinet upon removal of a child from the child's home of origin and subject to background checks similar to a caretaker relative.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is no increase in costs resulting from this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this administrative regulation, children removed from their homes of origin will benefit from an additional placement option, fictive kin, and enhanced safety afforded through the background checks required by this administrative regulation. In addition, the state overall will benefit from continued access to the FBI criminal history records and compliance with federal funding mandates.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no new or additional cost projected for the administrative body to implement this administrative regulation. To not effect this administrative regulation would result in threats to the state's child welfare funding.

(b) On a continuing basis: There is no new or additional cost projected for the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any fees, but rather, enforces the fees that law enforcement or judicial agencies charge to conduct criminal background checks. There is no increase in fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in item 4 of this analysis were added as additional safeguards for children in out-of-home or foster care. The federal law does not prohibit the addition of these restrictions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs for conducting the checks.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no new or additional costs projected as a result of this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no new or additional costs projected as a result of this regulatory amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an

NEW ADMINISTRATIVE REGULATIONS

COUNCIL ON POSTSECONDARY EDUCATION (New Administrative Regulation)

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the public university sector.

Section 1. Definitions. (1) "Academic year" means July 1st through June 30th and all terms completed therein.

(2) "Bachelor's Degrees" means total number of bachelor's degrees awarded during the academic year. Includes degrees conferred to resident and non-resident students.

(3) "Comprehensive university" is defined by KRS 164.001(7).

(4) "Council" is defined by KRS 164.092(1)(c).

(5) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.

(6) "Hold-harmless provision" is defined by KRS 164.092(1)(f).

(7) "Institution" means a public university.

(8) "Low-income students" means a student who has received a Federal Pell Grant at any time since 2005-2006 at the graduating institution.

(9) "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$450,000 of state appropriations at research universities and \$200,000 at comprehensive universities; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

(10) "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.

(11) "Research university" is defined by KRS 164.092(1)(j).

(12) "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

(13) "Small school adjustment" means a one (1)-time calculation made using the formula base amounts in 2017-2018 and equals:

(a) For a research university, ten (10) percent of the respective formula base amount for each institution; and

(b) For a comprehensive university, ten (10) percent of the total formula base amount for all comprehensive universities divided by six (6).

(14) "STEM+H degrees" mean degrees in the fields of science, technology, engineering, math, and health sciences as determined by the council.

(15) "Stop-loss provision" is defined by KRS 164.092(1)(k).

(16) "Underrepresented minority students" mean students who categorize themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races.

(17) "University allocable resources" is defined by KRS 164.092(1)(l).

Section 2. Allocable Resources. The council shall determine total university allocable resources for any given year by calculating each institution's formula base amount and subtracting the small school adjustment and any amount protected by a hold harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund

appropriation.

Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative regulation, bachelor's degrees, earned credit hours, facilities square feet, instruction and student services costs, and full time equivalent student enrollment shall be calculated with differential weights for research and comprehensive universities in accordance with the Public University Funding Model Metric Weighting Chart.

Section 4. Three (3)-year Rolling Average. Each metric shall be calculated by averaging the most recent three (3) years of finalized data.

Section 5. Student Success Outcomes. (1) Thirty-five (35) percent of total university allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes related to bachelor's degree production and student progression as established in KRS 164.092(6)(a)1. through 5., and in the following denominations:

(a) Nine (9) percent based on the normalized bachelor's degrees awarded in an academic year as described in the Public University Sector Funding Model Formula Chart;

(b) Five (5) percent based on STEM+H bachelor's degrees awarded in an academic year;

(c) Three (3) percent based on bachelor's degrees awarded to underrepresented minority students in an academic year;

(d) Three (3) percent based on bachelor's degrees awarded to low-income students in an academic year;

(e) Three (3) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in any term completed from August 1st to July 31st;

(f) Five (5) percent based on the number of full-time and part-time undergraduate students reaching or surpassing sixty (60) cumulative earned credit hours in any term completed from August 1st to July 31st; and

(g) Seven (7) percent based on the number of full-time and part-time undergraduate students reaching or surpassing ninety (90) cumulative earned credit hours in any term completed from August 1st to July 31st.

Section 6. Student Credit Hour Production. Thirty-five (35) percent of total university allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(6)(b).

(1) Credit hour weighting by course level and discipline shall be in accordance with the Public University Funding Model Earned Credit Hour Production Weighting Index. Credit hours earned by non-resident students shall be given half the weight of those earned by resident students in comparable programs of study; and

(2) The calculation shall not include credit hours earned by high school students taking courses for college credit.

Section 7. Operational Support. Thirty (30) percent of total university allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(6)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on facilities square feet as reported annually to the council and as established in KRS 164.092(6)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported on each institution's annual audited financial statement and as established in KRS 164.092(6)(c)2.

(3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as established in KRS 164.092(6)(c)3 and using the formula established in the Public University Sector Funding Model Formula Chart.

Section 8. Hold-harmless and Stop-loss Provisions. (1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions in fiscal year 2018-2019 through application of the formula established in this administrative regulation.

(a) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be designated as the institution's hold-harmless allocation.

(b) If applied, an institution maintaining a hold-harmless allocation shall not receive additional distributions of funding through the model until such time as the hold-harmless allocation balance is brought to zero through improved institutional performance, additional appropriations, or some combination thereof.

(c) The council shall apply these hold-harmless allocations, with any applicable credit adjustments as determined annually by the formula, to all applicable institutions in 2018-2019, 2019-2020, 2020-2021, and in any subsequent years as directed by the General Assembly.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Public University Funding Model Formula Chart," June 2017;

(b) "Public University Funding Model Metric Weighting Chart," June 2017; and

(c) "Public University Funding Model Earned Credit Hour Production Weighting Index," June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 10, 2017

FILED WITH LRC: July 10, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the comprehensive funding model for the allocation of state general fund appropriations to the Commonwealth's public universities.

(b) The necessity of this administrative regulation: KRS

164.092(12) requires that the Council on Postsecondary Education promulgate administrative regulations to implement the comprehensive funding model for the allocation of state general fund appropriations to public universities. KRS 164.092 provides the framework for the model and generally outlines the required elements. This regulation provides more detail related to the basis and process upon which the funding will be certified for allocation to these institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the process and basis upon which funding will be allocated to public universities through the comprehensive funding model mandated in KRS 164.092.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eight (8) public universities in Kentucky will be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Institutions must continue providing the Council with data used in the identified metrics and work with Council staff to ensure the accuracy and validity of that data.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance will incur no additional costs; however, after application of the funding model, institutions could see increases or decreases in general fund appropriations depending on institutional performance on the identified metrics as well as the overall general fund appropriation to higher education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While general fund appropriations could decrease after application of the funding model to the detriment of an institution, funding could also increase to its benefit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding can be used, most likely general operating expenses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A. This regulation does not assess fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? No. All regulated entities are of the same class, i.e. public universities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Council on Postsecondary Education (CPE) and all public universities in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.092.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? In and of itself, this regulation will not generate any revenue, however depending on campus performance and the overall general fund appropriation to higher education, institutions could see increases in general fund revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Duties related to this regulation are generally assumed by CPE staff members as part of their many other responsibilities. There are no additional costs of administration.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

COUNCIL ON POSTSECONDARY EDUCATION (New Administrative Regulation)

13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions.

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the Kentucky Community and Technical College System sector.

Section 1. Definitions. (1) "Academic year" means July 1 through June 30 and all terms completed therein.

(2) "Associate's Degrees" means total number of associate's degrees awarded during the academic year. Includes degrees conferred to resident and non-resident students.

(3) "Council" is defined by KRS 164.092(1)(c).

(4) "Equity adjustment" means ten (10) percent of total KCTCS institution allocable resources divided by sixteen (16) and allocated to each institution.

(5) "Full time equivalent student enrollment" means the total fall semester credit hours earned divided by fifteen (15).

(5) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.

(6) "High-wage, high-demand credentials" means credentials tied to occupations identified in the Kentucky Office of Employment and Training's Kentucky Occupational Outlooks and annual Occupational Employment statistics wage data that meet the following criteria:

(a) Have a median annual wage that is greater than or equal to the wage at the 75th percentile for all occupations in the state of Kentucky; or

(b) Show growth greater than or equal to the projected percent change for all Kentucky occupations; or

(c) Have 100 or more average annual job openings.

(7) "Hold-harmless provision" is defined by KRS 164.092(1)(f).

(8) "Institution" means a college in the Kentucky Community and Technical College System.

(9) "KCTCS" is defined by KRS 164.092(1)(h).

(10) "KCTCS institution allocable resources" is defined by KRS 164.092(1)(i)

(11) "Low-income students" means a student who has received a Federal Pell Grant at any time since 2005-2006 at the graduating institution.

(12) "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$200,000 of state appropriations; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

(13) "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.

(14) "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

(15) "STEM+H degrees" mean degrees in the fields of science, technology, engineering, math, and health sciences as identified to annually by KCTCS.

(16) "Stop-loss provision" is defined by KRS 164.092(1)(k).

(17) "Targeted industry credentials" means credentials awarded in Classification of Instructional Programs (CIP) codes developed by the U.S. Department of Education's National Center for Education Statistics that crosswalk to occupations with education or training requirements of an associate degree or below in targeted industry sectors as identified in a targeted industry CIPs index provided annually by KCTCS.

(18) "Underprepared students" mean students who tested into developmental English, math, or reading at any period of enrollment since the 2010-11 academic year.

(19) "Underrepresented minority students" mean students who categorized themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races.

Section 2. Allocable Resources. The council shall determine total KCTCS institution allocable resources for any given year by calculating each institution's formula base amount and subtracting the equity adjustment and any amount protected by a hold harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Data Sets. Unless indicated otherwise, each metric shall be calculated using the most recent set of finalized data.

Section 4. Student Success Outcomes. (1) Thirty five (35) percent of total KCTCS institution allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes as established in KRS 164.092(8)(a)1. through 8., and in the following denominations:

(a) Ten (10) percent based on the credentials awarded in an academic year using an average of the most recent three (3) years of finalized data and weighted in the following manner:

1.1.0 for an undergraduate certificate or diploma which a student can complete in less than one (1) academic year;

2. 2.0 for an undergraduate certificate or diploma which a student can complete in at least one (1), but less than two (2) academic years;

3. 4.0 for an associate's degree.

(b) Two (2) percent based on STEM+H credentials awarded in an academic year;

(c) Two (2) percent based on credentials awarded to underrepresented minority students in an academic year;

(d) Two (2) percent based on credentials awarded to low-income students in an academic year;

(e) Two (2) percent based on credentials awarded to underprepared students in an academic year;

(f) Two (2) percent based on the number of students in cohort who transferred to a baccalaureate degree granting college or university after the last term a student was enrolled at a KCTCS institution in the academic year;

(g) Two (2) percent based on targeted industry credentials awarded in an academic year; and

(h) One (1) percent based on high-wage, high-demand credentials awarded in an academic year;

(i) Two (2) percent based on the number of full-time and part-time undergraduate students reaching or surpassing fifteen (15) cumulative earned credit hours in an academic year;

(j) Four (4) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in an academic year; and

(k) Six (6) percent based on the number of full-time and part-time undergraduate students reaching or surpassing forty-five (45) cumulative earned credit hours in an academic year.

Section 5. Student Credit Hour Production. Thirty five (35) percent of total KCTCS allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(8)(b). (1) Credit hour weighting by course discipline shall be in accordance with the KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index.

Section 6. Operational Support. Thirty (30) percent of total KCTCS allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(8)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on facilities square feet as reported annually to the council and as established in KRS 164.092(8)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported to IPEDS and as established in KRS 164.092(8)(c)2.

(3) Ten (10) percent shall be allocated based on total full time equivalent student enrollment as established in KRS 164.092(8)(c)3.

Section 7. Stop-loss and Hold-Harmless Provisions. (1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions in fiscal year 2018-2019 through application of the formula established in this administrative regulation.

(3) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be provided to KCTCS as that institution's hold-harmless allocation.

(4) The council shall apply these hold-harmless allocations to all applicable institutions in 2018-2019 and in any subsequent years as directed by the General Assembly.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index", June 2017;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 10, 2017

FILED WITH LRC: July 10, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College (KCTCS) institutions.

(b) The necessity of this administrative regulation: KRS 164.092(12) requires that the Council on Postsecondary Education promulgate administrative regulations to implement the comprehensive funding model for the allocation of state general fund appropriations to KCTCS institutions. KRS 164.092 provides the framework for the model and generally outlines the required elements. This regulation provides more detail related to the basis and process upon which the funding will be certified for allocation to these institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the process and basis upon which funding will be allocated to KCTCS institutions through the comprehensive funding model mandated in KRS 164.092.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KCTCS and its 16 colleges will be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KCTCS must continue providing the Council with data used in the identified metrics and work with Council staff to ensure the accuracy and validity of that data.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): Compliance will incur no additional costs; however, after application of the funding model, institutions could see increases or decreases in general fund appropriations depending on institutional performance in the identified metrics as well as the overall general fund appropriation to higher education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While general fund appropriations could decrease after application of the funding model to the detriment of an institution, funding could also increase to its benefit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding can be used, most likely general operating expenses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A. This regulation does not assess fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? No. All regulated entities are of the same class, i.e. KCTCS institutions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Council on Postsecondary Education (CPE) and all public universities in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.092.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? In and of itself, this regulation will not generate any revenue, however depending on campus performance and the overall general fund appropriation to higher education, institutions could see increases in general fund revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Duties related to this regulation are generally assumed by CPE staff members as part of their many other responsibilities. There are no additional costs of administration.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Pharmacy (New Administrative Regulation)

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010(24), 315.191(1)(a), (f)

STATUTORY AUTHORITY: KRS 315.010(24), 315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(24) defines prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for protocols by which pharmacists may initiate the dispensing of medications or other professional services.

Section 1. Definition. (1) "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. (1) Pharmacists may initiate the dispensing of medications or other professional services under the following conditions:

(a) A prescriber-approved protocol that meets the minimum requirements as set forth by the board is in place, and is dated and signed by the prescriber and pharmacists authorized to initiate the dispensing of medications or other professional services;

(b) The protocol has been approved by the board; and

(c) The pharmacist documents the dispensing event in the pharmacy management system, including:

1. Documentation as required by 201 KAR 2:170 for dispensing of prescription medication; and

2. Documentation that the individual receiving the medication or other professional service was provided with education pursuant to this administrative regulation.

Section 3. Minimum Requirements of Protocol. (1) Protocols shall contain the following elements:

(a) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(b) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(c) Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

(d) Education to be provided to the person receiving the dispensed medications;

(e) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the physician signing the protocol, if requested;

(f) Length of time protocol is in effect;

(g) Date and signature of prescriber approving the protocol; and

(h) Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the accreditation council for pharmacy education or by a comparable provider approved by the board.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2017, at 8 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort,

Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910; fax (502) 696-3806, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes protocol procedures for pharmacists who dispense medication through protocols.

(b) The necessity of this administrative regulation: KRS 315.010(24) defines a prescription drug order to include protocols authorized by the board. This administrative regulation establishes protocols that are authorized by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(24) defines a prescription drug order to include protocols authorized by the board. This administrative regulation establishes criteria for protocols to be authorized by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prescribers, pharmacists, pharmacies, patients, and the public will be able to ascertain what is required for pharmacist dispensing of medications pursuant to protocols.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 1000 protocols will be established with this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists who want to dispense medications pursuant to a protocol will enter into protocols with prescribers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will be able to dispense medications pursuant to physician-approved protocols with the benefits of increased convenience and accessibility to medications for patients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from fees will be used for implementation of this administrative regulation. Enforcement of this regulation shall be accomplished through normal and customary inspections.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because the regulation is applicable to all pharmacists that enter into a protocol for the dispensing of medications.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a) and (f) authorize the board to promulgate administrative regulations to regulate and control pharmacies, pharmacists, and prescription drug orders. KRS 315.010(24) defines prescription drug orders to include orders issued through protocols authorized by the board.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the Kentucky Board of Pharmacy in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the Kentucky Board of Pharmacy in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. N/A

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 31:002. Repeal of 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.43, 224.46, 224.50-130, 224.99, 40 C.F.R. Part 260, 261

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:060.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 31:005, Definitions for 401 KAR Chapter 31;
- (2) 401 KAR 31:010, General provisions for hazardous wastes;
- (3) 401 KAR 31:020, Criteria for identifying the characteristics of hazardous waste and criteria for listing;
- (4) 401 KAR 31:030, Characteristics of hazardous wastes;
- (5) 401 KAR 31:035, Rulemaking petitions;
- (6) 401 KAR 31:040, Lists of hazardous wastes;
- (7) 401 KAR 31:050, General provisions for special wastes;
- (8) 401 KAR 31:070, Delisted hazardous waste streams;
- (9) 401 KAR 31:100, Representative sampling methods;
- (10) 401 KAR 31:110, Method 1311 toxicity characteristic leaching procedure;
- (11) 401 KAR 31:160, Appendix on basis for listing hazardous waste; and
- (12) 401 KAR 31:170, Appendix on hazardous waste constituents.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for hazardous waste handlers as required by KRS 224.10-100, 224.46-510, and 224.50-545 for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste. These provisions have been consolidated into 401 KAR 39:060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the identification and listing of hazardous waste.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the identification and listing of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the identification and listing of hazardous waste into 401 KAR 39:060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:060.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 224.46-530, 224.50-130, 40 C.F.R. Part 260, and 40 C.F.R. Part 261.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 32:002. Repeal of 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.46, 224.99, 40 C.F.R. Part 260, 262

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:080.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 32:005, Definitions for 401 KAR Chapter 32;
- (2) 401 KAR 32:010, General provisions for generators;
- (3) 401 KAR 32:020, Manifest system;
- (4) 401 KAR 32:030, Pretransport requirements;
- (5) 401 KAR 32:040, Recordkeeping and reporting;
- (6) 401 KAR 32:050, Special conditions;
- (7) 401 KAR 32:060, Farmers;
- (8) 401 KAR 32:065, Transfrontier shipments of hazardous waste for recovery within the OECD; and
- (9) 401 KAR 32:100, Appendix on hazardous waste manifest and instructions.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:080.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards applicable to generators of hazardous waste, as required by KRS 224.10-100, and 224.46-510. These provisions have been consolidated into 401 KAR 39:080.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards applicable to generators of hazardous waste.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:080.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the standards applicable to generators of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards applicable to generators of hazardous waste into 401 KAR 39:080.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:080.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 40 C.F.R. Part 260, and 40 C.F.R. Part 262.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 33:002. Repeal of 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.46, 224.99, 40 C.F.R. Part 260, 263

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:080.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 33:005, Definitions for 401 KAR Chapter 33;

(2) 401 KAR 33:010, General provisions for transporters;

(3) 401 KAR 33:020, Compliance with the manifest system and recordkeeping; and

(4) 401 KAR 33:030, Hazardous waste discharges during transportation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:080.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards applicable to transporters of hazardous waste, as required by KRS 224.10-100, 224.46-510, and 224.46-560. These provisions have been consolidated into 401 KAR 39:080.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards applicable to transporters of hazardous waste.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:080.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the standards applicable to

transporters of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards applicable to transporters of hazardous waste into 401 KAR 39:080.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:080.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 224.46-560, 40 C.F.R. Part 260, and 40 C.F.R. Part 263.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional

funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 34:002. Repeal of 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99, 322.010, 40 C.F.R. 144.62, 260.10, 264

STATUTORY AUTHORITY: KRS 224.1-400, 224.10-100, 224.46-505, 224.46-510, 224.46-520, 224.46-530, 224.50-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:090.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 34:005, Definitions for 401 KAR Chapter 34;
- (2) 401 KAR 34:010, General provisions for facilities;
- (3) 401 KAR 34:020, General facility standards;
- (4) 401 KAR 34:030, Preparedness and prevention;
- (5) 401 KAR 34:040, Contingency plan and emergency procedures;
- (6) 401 KAR 34:050, Manifest system, recordkeeping and reporting;
- (7) 401 KAR 34:060, Releases from solid waste management units;
- (8) 401 KAR 34:070, Closure and postclosure;
- (9) 401 KAR 34:080, General financial requirements;
- (10) 401 KAR 34:090, Closure financial requirements;
- (11) 401 KAR 34:100, Postclosure financial requirements;
- (12) 401 KAR 34:110, Use of a mechanism for closure and postclosure;
- (13) 401 KAR 34:120, Liability requirements;
- (14) 401 KAR 34:130, Incapacity of owners or operators, guarantors, or financial institutions;
- (15) 401 KAR 34:180, Use and management of containers;
- (16) 401 KAR 34:190, Tank systems;
- (17) 401 KAR 34:200, Surface impoundments;
- (18) 401 KAR 34:210, Waste piles;
- (19) 401 KAR 34:220, Land treatment;
- (20) 401 KAR 34:230, Landfills;
- (21) 401 KAR 34:240, Incinerators;

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- (22) 401 KAR 34:245, Containment buildings;
- (23) 401 KAR 34:250, Miscellaneous units;
- (24) 401 KAR 34:275, Air emission standards for process vents;
- (25) 401 KAR 34:280, Air emission standards for equipment leaks;
- (26) 401 KAR 34:281, Air emission standards for tanks, surface impoundments, and containers;
- (27) 401 KAR 34:285, Drip pads;
- (28) 401 KAR 34:287, Special provisions for cleanup;
- (29) 401 KAR 34:290, Recordkeeping instructions;
- (30) 401 KAR 34:320, Cochran's approximation to the Behrens-Fisher Students' T-Test;
- (31) 401 KAR 34:330, Examples of potentially incompatible waste;
- (32) 401 KAR 34:340, Appendix on political jurisdictions and demonstration of compliance with the seismic standards;
- (33) 401 KAR 34:350, Treatment of nerve and blister agents;
- (34) 401 KAR 34:360, List of hazardous constituents for groundwater monitoring; and
- (35) 401 KAR 34:370, Hazardous waste munitions and explosives storage.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for owners and operators of hazardous waste storage, treatment, and disposal

facilities as required by KRS 224.10-100, 224.46-510, and 224.46-560. These provisions have been consolidated into 401 KAR 39:090.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards for owners and operators of hazardous waste storage, treatment, and disposal facilities.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:090.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the standards for owners and operators of hazardous waste storage, treatment, and disposal facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards for owners and operators of hazardous waste storage, treatment, and disposal facilities into 401 KAR 39:090.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:090.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 224.46-560, 40 C.F.R.

Part 260, and 40 C.F.R. Part 264.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 35:002. Repeal of 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 322.010, 40 C.F.R. 144.62, 260.10, 264, 265

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:090.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 35:005, Definitions for 401 KAR Chapter 35;

(2) 401 KAR 35:010, General provisions for facilities (Interim Status);

(3) 401 KAR 35:020, General facility standards (Interim Status);

(4) 401 KAR 35:030, Preparedness and prevention (Interim Status);

(5) 401 KAR 35:040, Contingency plan and emergency

procedures (Interim Status);

(6) 401 KAR 35:050, Manifest system, recordkeeping and reporting (Interim Status);

(7) 401 KAR 35:060, Groundwater monitoring (Interim Status);

(8) 401 KAR 35:070, Closure and postclosure (Interim Status);

(9) 401 KAR 35:080, General financial requirements (IS);

(10) 401 KAR 35:090, Closure financial requirements (IS);

(11) 401 KAR 35:100, Postclosure financial requirements (IS);

(12) 401 KAR 35:110, Use of a mechanism for closure and postclosure (IS);

(13) 401 KAR 35:120, Liability requirements (IS);

(14) 401 KAR 35:130, Incapacity of owners or operators, guarantors, or financial institutions (IS);

(15) 401 KAR 35:180, Use and management of containers (Interim Status);

(16) 401 KAR 35:190, Tank systems (Interim Status);

(17) 401 KAR 35:200, Surface impoundments (Interim Status);

(18) 401 KAR 35:210, Waste piles (Interim Status);

(19) 401 KAR 35:220, Land treatment (Interim Status);

(20) 401 KAR 35:230, Landfill (Interim Status);

(21) 401 KAR 35:240, Incinerators (Interim Status);

(22) 401 KAR 35:245, Containment buildings (Interim Status);

(23) 401 KAR 35:250, Thermal treatment (Interim Status);

(24) 401 KAR 35:260, Chemical, physical and biological treatment (Interim Status);

(25) 401 KAR 35:270, Underground injection (Interim Status);

(26) 401 KAR 35:275, Air emission standards for process vents (Interim Status);

(27) 401 KAR 35:280, Air emission standards for equipment leaks (Interim Status);

(28) 401 KAR 35:281, Air emission standards for tanks, surface impoundments, and containers (Interim Status);

(29) 401 KAR 35:285, Drip pads (Interim Status);

(30) 401 KAR 35:290, Appendix on recordkeeping instructions (Interim Status);

(31) 401 KAR 35:310, Appendix on interim primary drinking water standards (Interim Status);

(32) 401 KAR 35:320, Appendix on tests for significance (Interim Status);

(33) 401 KAR 35:330, Appendix on examples of potentially incompatible waste (Interim Status);

(34) 401 KAR 35:340, Appendix on compounds with Henry's Law Constant less than 0.1 Y/X (Interim Status); and

(35) 401 KAR 35:350, Hazardous waste munitions and explosives storage (Interim Status).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone, (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation repeals 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for owners and operators of hazardous waste storage, treatment, and disposal facilities as required by KRS 224.10-100, 224.46-505, 224.46-510, 224.46-520, 224.46-530, and 224.46-560. These provisions have been consolidated into 401 KAR 39:090.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the interim status standards for owners and operators of hazardous waste storage, treatment, and disposal facilities.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:090.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the interim status standards for owners and operators of hazardous waste storage, treatment, and disposal facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the interim status standards for owners and operators of hazardous waste storage, treatment, and disposal facilities into 401 KAR 39:090.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:090.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 224.46-520, 224.46-530, 40 C.F.R. Part 260, 40 C.F.R. 264, and 40 C.F.R. Part 265.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 36:002. Repeal of 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, and 401 KAR 36:090.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.43, 224.46, 224.99, 40 C.F.R. 260.10, 266

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, 401 KAR 36:090. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:090.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 36:005, Definitions for 401 KAR Chapter 36;
- (2) 401 KAR 36:020, Hazardous waste burned in boilers and industrial furnaces;
- (3) 401 KAR 36:025, Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities;
- (4) 401 KAR 36:030, Recyclable materials used in a manner constituting disposal;
- (5) 401 KAR 36:060, Recyclable materials used for precious metal recovery;
- (6) 401 KAR 36:070, Spent lead-acid batteries being reclaimed;
- (7) 401 KAR 36:080, Military munitions; and
- (8) 401 KAR 36:090, Conditional exemption for low-level mixed waste storage, treatment, transportation, and disposal.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, and 401 KAR 36:090.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities as required by KRS 224.10-100, 224.46-520, and 224.46-530. These provisions have been consolidated into 401 KAR 39:090.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:090.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by

repealing the regulations pertaining to the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities into 401 KAR 39:090.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:090.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-520, 224.46-530, 40 C.F.R. Part 260, and 40 C.F.R. Part 266.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first

year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)**

401 KAR 37:002. Repeal of 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 C.F.R. 260.10, Part 268

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:060.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 37:005, Definitions for 401 KAR Chapter 37;
- (2) 401 KAR 37:010, General provisions for land disposal restrictions;
- (3) 401 KAR 37:020, Surface impoundment exemptions;
- (4) 401 KAR 37:030, Prohibitions on land disposal;
- (5) 401 KAR 37:040, Treatment standards;
- (6) 401 KAR 37:050, Prohibitions on storage;
- (7) 401 KAR 37:060, Appendix to Chapter 37; and
- (8) 401 KAR 37:110, Appendix on the California list of halogenated organic compounds regulated under the landban.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, Fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation repeals 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530, and 224.50-545 for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste. These provisions have been consolidated into 401 KAR 39:060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the land disposal restrictions of hazardous waste.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the land disposal restrictions of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the land disposal restrictions of hazardous waste into 401 KAR 39:060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:060.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-505, 224.46-520, 224.50-530, 40 C.F.R. Part 260, and 40 C.F.R. Part 268.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)**

401 KAR 38:002. Repeal of 401 KAR 38:005, 401 KAR 38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, and 401 KAR 38:500.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 C.F.R. Part 124, 260.10, 264.13, Part 270, 15 U.S.C. 2601, 33 U.S.C. 1251, 42 U.S.C. 3001

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.40-305, 224.46-505, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 38:005, 401 KAR 38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, and 401 KAR 38:500. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:060.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 38:005, Definitions for 401 KAR Chapter 38;
- (2) 401 KAR 38:010, General provisions for permitting;
- (3) 401 KAR 38:020, Interim status provisions;

(4) 401 KAR 38:025, Permit review and determination timetables;

(5) 401 KAR 38:030, Conditions applicable to all permits;

(6) 401 KAR 38:040, Changes to permits; expiration of permits;

(7) 401 KAR 38:050, Public information procedures;

(8) 401 KAR 38:060, Special types of permits;

(9) 401 KAR 38:070, Application procedures;

(10) 401 KAR 38:080, Contents of Part A application;

(11) 401 KAR 38:090, General contents of Part B application;

(12) 401 KAR 38:150, Specific Part B requirements for containers;

(13) 401 KAR 38:160, Specific Part B information requirements for tanks;

(14) 401 KAR 38:170, Specific Part B requirements for surface impoundments;

(15) 401 KAR 38:180, Specific Part B requirements for waste piles;

(16) 401 KAR 38:190, Specific Part B requirements for incinerators;

(17) 401 KAR 38:200, Specific Part B requirements for land treatment facilities;

(18) 401 KAR 38:210, Specific Part B requirements for landfills;

(19) 401 KAR 38:230, Specific Part B requirements for miscellaneous units;

(20) 401 KAR 38:240, Specific Part B requirements for process vents;

(21) 401 KAR 38:250, Specific Part B requirements for equipment;

(22) 401 KAR 38:260, Specific Part B requirements for boilers and industrial furnaces burning hazardous waste;

(23) 401 KAR 38:270, Specific Part B information requirements for drip pads;

(24) 401 KAR 38:290, Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers;

(25) 401 KAR 38:300, Specific Part B information requirements for postclosure permits;

(26) 401 KAR 38:310, Permit denial;

(27) 401 KAR 38:320, Remedial action plans;

(28) 401 KAR 38:330, Integration with Maximum Achievable Control Technology (MACT) Standards; and

(29) 401 KAR 38:500, Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 38:005, 401 KAR

38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, and 401 KAR 38:500.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for the hazardous waste permitting process, as required by KRS 224.10-100, 224.10-220, 224.40-305, 224.46-505, 224.46-520, and 224.46-530 for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste. These provisions have been consolidated into 401 KAR 39:060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards for the hazardous waste permitting process.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to standards for the hazardous waste permitting process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards for the hazardous waste permitting process into 401 KAR 39:060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:060.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not

applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-220, 224.40-305, 224.46-505, 224.46-520, 224.46-530, 40 C.F.R. Part 260.10, 40 C.F.R. Part 124, 40 C.F.R. 264.13, 40 C.F.R. Part 270, 15 U.S.C. 2601, 33 U.S.C. 1251, and 42 U.S.C. 3001.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 39:011. Repeal of 401 KAR 39:100 and 401 KAR 39:110.

RELATES TO: KRS Subchapters 224.10, 224.46, 224.99, 40 C.F.R. Part 273, Part 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 39:100 and 401 KAR 39:110. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:120.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 39:100, Exposure information report fee; and

(2) 401 KAR 39:110, Registration fees.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 39:100 and 401 KAR 39:110.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:120.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish registration and environmental exposure reporting fees for the hazardous waste program, as required by KRS 224.10-100 and 224.46-550. These provisions have been consolidated into 401 KAR 39:120.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the registration and environmental exposure reporting fees for the hazardous waste program.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:120.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the identification and listing of hazardous waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the registration and environmental exposure reporting fees for the hazardous waste program into 401 KAR 39:120.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:120.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 and 224.46-550.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 43:002. Repeal of 401 KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070.

RELATES TO: KRS Subchapters 224.1, 224.10, 224.40, 224.43, 224.46, 40 C.F.R. 260.10, Part 273, 7 U.S.C. 136-136

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal

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KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:080.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 43:005, Definitions for 401 KAR Chapter 43;
- (2) 401 KAR 43:010, General standards for universal waste;
- (3) 401 KAR 43:020, Standards for small quantity handlers of universal waste;
- (4) 401 KAR 43:030, Standards for large quantity handlers of universal waste;
- (5) 401 KAR 43:040, Standards for universal waste transporters;
- (6) 401 KAR 43:050, Standards for destination facilities;
- (7) 401 KAR 43:060, Import requirements; and
- (8) 401 KAR 43:070, Petitions to include other wastes under 401 KAR Chapter 43.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:080.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for special collection system wastes, as required by KRS 224.10-100, and 224.46-510. These provisions have been consolidated into 401 KAR 39:080.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards for special collection system wastes.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the

regulations has been consolidated into 401 KAR 39:080.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the standards for special collection system wastes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards for special collection system wastes into 401 KAR 39:080.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:080.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 40 C.F.R. Part 260.10, and 40 C.F.R. Part 273.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 44:002. Repeal of 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080.

RELATES TO: KRS Subchapters 224.10, 224.40, 224.43, 224.46, 224.50, 40 C.F.R. Part 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 39:080.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 44:005, Definitions for 401 KAR Chapter 44;
- (2) 401 KAR 44:010, Applicability;
- (3) 401 KAR 44:020, Standards for used oil generators;
- (4) 401 KAR 44:030, Standards for used oil collection centers and aggregation points;
- (5) 401 KAR 44:040, Standards for used oil transporter and transfer facilities;
- (6) 401 KAR 44:050, Standards for used oil processors and re-refiners;
- (7) 401 KAR 44:060, Standards for used oil burners who burn off-specification used oil for energy recovery;
- (8) 401 KAR 44:070, Standards for used oil fuel marketers; and
- (9) 401 KAR 44:080, Standards for use as a dust suppressant and disposal of used oil.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 39:080.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. The regulations being repealed have been consolidated into 401 KAR 39:080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for the management of used oil, as required by KRS 224.10-100, 224.46-510, 224.46-530, and 224.46-550. These provisions have been consolidated into 401 KAR 39:080.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the standards for the management of used oil.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations has been consolidated into 401 KAR 39:080.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the standards for the management of used oil.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the standards for the management of used oil into 401 KAR 39:080.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being consolidated into 401 KAR 39:080.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes. In addition this administrative regulation will impact the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545, and 40 C.F.R. Part 279.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

410 KAR 1:002. Repeal of 410 KAR 1:010 and 410 KAR 1:020.

RELATES TO: KRS Subchapters KRS 224.40-310, 224.43-815, 224.46-505, 224.46-510, 224.46-520, 224.46-810, 224.46-820, 224.46-825, 224.46-830, 224.46-840, 224.46-850, 224.46-860, 224.46-870, 224.50-760

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 410 KAR 1:010 and 410 KAR 1:020. This administrative regulation repeals these administrative regulations because Senate Bill 249 of the Regular Session of the 2017 General Assembly, once effective, will remove the statutory authority for these administrative regulations.

Section 1. The following administrative regulations are hereby repealed:

(1) 410 KAR 1:010, Application process; and

(2) 410 KAR 1:020, Fees.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 410 KAR 1:010 and 410 KAR 1:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations in contemplation of Senate Bill 249 becoming effective.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. Senate Bill 249, once effective, will repeal the statutory authority and mandates for these administrative regulations that are currently established in KRS 224.46-810 through KRS 224.46-870.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish an application process and fees for a certificate of environmental safety and public necessity obtained through the Regional Integrated Waste Treatment and Disposal Facility Siting Board. Senate Bill 249 will repeal the mandates requiring the need for a certificate of environmental safety and public necessity and abolish the Regional Integrated Waste Treatment Disposal Facility Siting Board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the application process and fees for a certificate of environmental safety and public necessity obtained through the Regional Integrated Waste Treatment and Disposal Facility Siting Board.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because Senate Bill 249 will repeal the mandates requiring the need for a certificate of environmental safety and public necessity and abolish the Regional Integrated Waste Treatment Disposal Facility Siting Board. In addition, these regulations, effective since 1985, have never had an application submitted in conjunction with them, nor has a Regional Integrated Waste Treatment Disposal Facility Siting Board ever been established.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the application process and fees for a certificate of environmental safety and public necessity obtained through the Regional Integrated Waste Treatment and Disposal Facility Siting Board.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will repeal the administrative regulations in contemplation of Senate Bill 249 becoming effective and the repeal of their statutory authority in KRS 224.46-810 through KRS 224.46-870.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of these regulations will have no impact as there has never been an application submitted in conjunction with these regulations and the Regional Integrated Waste Treatment and Disposal Facility Siting Board has never been established.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of these regulations will have no impact as there has never been an application submitted in conjunction with these regulations and the Regional Integrated Waste Treatment and Disposal Facility Siting Board has never been established.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Senate Bill 249, KRS 224.10-100

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Repealer)

805 KAR 1:071. Repeal of 805 KAR 1:070.

RELATES TO: KRS 353.110, 353.120, 353.170, 353.550, 353.739

STATUTORY AUTHORITY: KRS 353.500, KRS 353.540, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.500(2) provides the department the authority to repeal 805 KAR 1:070. This administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative. This administrative regulation is being repealed in order to move the plugging requirements for coal bearing strata into 805 KAR 1:060.

Section 1. 805 KAR 1:070, Plugging wells; coal-bearing strata, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by August 15, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 805 KAR 1:070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 805 KAR 1:070. The information has been moved to 805 KAR 1:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations related to the plugging of oil and gas wells. Moving the information into 805 KAR 1:060 places all the plugging information in one administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes the requirements for plugging wells in coal-bearing strata. These provisions have been

moved to 805 KAR 1:060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulation pertaining to plugging wells in coal bearing strata.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information has been moved into 805 KAR 1:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulation pertaining to plugging wells in coal-bearing strata.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to plugging wells in the Commonwealth into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,000 oil and gas operators within the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action associated with this repealer. Requirements for plugging wells in coal-bearing strata are being moved to 805 KAR 1:060.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Operators will benefit by having all the plugging information located in one administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not involve any fees.

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.500 authorizes the department to promulgate administrative regulations related to oil and gas. KRS 353.550 authorizes the department to require operators to plug wells within the Commonwealth.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Repealer)

805 KAR 9:041. Repeal of 805 KAR 9:040.

RELATES TO: KRS 349.025

STATUTORY AUTHORITY: KRS 353.500, 349.025(5), 349.115, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.500(2) provides the department the authority to repeal 805 KAR 9:040. This administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative and in order to move the plugging requirements for coal bed methane wells into 805 KAR 1:060.

Section 1. 805 KAR 9:040, Plugging wells, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by August 15, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 805 KAR 1:070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 805 KAR

9:040. The information has been moved to 805 KAR 1:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations related to the plugging of coal bed methane wells. Moving the information into 805 KAR 1:060 places all the plugging information in one administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes the requirements for plugging coal bed methane wells. These provisions have been moved to 805 KAR 1:060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulation pertaining to plugging coal bed methane wells.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information has been moved into 805 KAR 1:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulation pertaining to plugging coal bed methane wells.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to plugging wells in the Commonwealth into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1000 oil and gas operators within the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action associated with this repealer. Requirements for plugging coal bed methane wells are being moved to 805 KAR 1:060.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Operators will benefit by having all the plugging information located in one administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not involve any fees.

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.500 authorizes the department to promulgate administrative regulations related to oil and gas. KRS 349.025 authorizes the department to require operators to plug coal bed methane wells within the Commonwealth.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET Department of Insurance Commissioner's Office (Repealer)

806 KAR 3:011. Repeal of 806 KAR 3:010, 806 KAR 3:020, and 806 KAR 3:220.

RELATES TO: KRS 304.3-100(3), 304.2-180, 304.3-240

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations for or as an aid to the effectuation of any provision of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 3:010, Reservation of Insurer's name; fee, allowing a foreign insurer to reserve its name, because the administrative regulation conflicts with and is repetitive of statutorily established requirements for an insurer to reserve a name within KRS 304.3-100(3). This administrative regulation also repeals 806 KAR 3:020, Annual Statements, which provides authority for the commissioner to allow an insurer to file a synopsis of their annual statement compatible with a computer. 806 KAR 3:020 is outdated because the statutory authority for this commissioner's report under KRS 304.2-180 has been repealed and the administrative regulation conflicts with annual report form requirements prescribed in KRS 304.3-240. Finally, this administrative regulation also repeals 806 KAR 3:220, Privacy of health information, because the provisions of that administrative regulation have been consolidated into a comprehensive privacy administrative regulation in 806 KAR 3:210 to eliminate duplicative provisions.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 3:010, Reservation of insurer's name; fee;
- (2) 806 KAR 3:020, Annual statements; and
- (3) 806 KAR 3:220, Privacy of health information.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 9:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 3:010, 806 KAR 3:020, and 806 KAR 3:220.

(b) The necessity of this administrative regulation: As described in the body of the "repealer," this administrative regulation repeals three regulations that are repetitive, outdated, and in conflict with the enabling statutes. Through this repealer, the Department clarifies requirements for regulated entities to ease compliance burdens and prevent confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation repeals three (3) obsolete or redundant administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals three (3) administrative regulations that are no longer necessary, redundant, or in conflict with statutory provisions. Repealing these regulations will prevent confusion among regulated entities regarding their obligations to remain in compliance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will repeal obsolete or redundant regulations, and will clarify standards for the Department's licensees, including the numerous insurance companies subject these regulations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action because of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of these regulations will provide clarity on compliance requirements for regulated entities, primarily with the filing requirements for annual statements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a continuing cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer the repeal of these regulations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(Repealer)

806 KAR 5:031. Repeal of 806 KAR 5:030 and 806 KAR 5:040.

RELATES TO: KRS 304.5-010, 304.9-030, 304.5-080
 STATUTORY AUTHORITY: KRS 13A.310, 304.2-110
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 5:030, Surety insurance not to include bail bonds, because KRS 431.510 prohibits the furnishing or making of bail bonds. This administrative regulation also repeals 806 KAR 5:040, Nationwide marine definition, because it conflicts with the statutory definition of "marine and transportation insurance" in KRS 304.5-080.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 5:030, Surety insurance not to include bail bonds; and
- (2) 806 KAR 5:040, Nationwide marine defined.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 9:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-266, email Patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation repeals 806 KAR 5:030 and 806 KAR 5:040.
 - (b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 5:030, Surety insurance not to include bail bonds, because KRS 431.510 prohibits the furnishing or making of bail bonds. This administrative regulation also repeals 806 KAR 5:040, Nationwide marine definition, which conflicts with the statutory definition of "marine insurance and transportation insurance" in KRS 304.5-080.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate

administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing two (2) obsolete administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals two (2) administrative regulations that are no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not have a direct impact on insurers or other regulated entities as it repeals an administrative regulation that was promulgated pursuant to obsolete statutes and does not change existing business practices of the Department of Insurance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action because of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer the repeal of these regulations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(Repealer)

806 KAR 7:011. Repeal of 806 KAR 7:010.

RELATES TO: KRS 304.7-340

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 7:010, Loans to relatives, prohibited investments, because the statutory authority for this regulation, KRS 304.7-340, has been repealed. Additionally, such loans are governed more appropriately by KRS 304.7-365 and responsible corporate officer and fiduciary duty laws.

Section 1. 806 KAR 7:010, Loans to relatives; prohibited investments, is hereby repealed.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 7:010.

(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 7:010, Loans to relatives, prohibited investments, because the statutory authority for this regulation, KRS 304.7-340, has been repealed. Additionally, such loans are governed more appropriately by KRS 304.7-365 and responsible corporate officer and fiduciary duty laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation repeals one (1) obsolete administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals one (1) administrative regulation that is no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not have a direct impact on insurers or other regulated entities as it repeals an administrative regulation that was promulgated pursuant to obsolete statutes and does not change existing business practices of the Department of Insurance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action because of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer the repeal of these regulations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Commissioner's Office (Repealer)

806 KAR 9:051. Repeal of 806 KAR 9:050 and 806 KAR 9:300.

RELATES TO: KRS 304.9-390, 304-9

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 9:050, Agent's records, which is in conflict with the statutory requirements of KRS 304.9-390. This administrative regulations also repeals 806 KAR 9:300, Current agent licenses in good standing to receive equivalent, which is obsolete and outdated because its only discrete and limited purpose has been accomplished.

Section 1. The following administrative regulations are hereby

repealed:

(1) 806 KAR 9:050, Agent's records; and

(2) 806 KAR 9:300, Current agent licensees in good standing to receive equivalent license.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2017 at 10:45 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-266, email Patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 9:050 and 806 KAR 9:300.

(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 9:050, Agent's records, which is in conflict with the requirements of KRS 304.9-390. This administrative regulation also repeals 806 KAR 9:300, Current agent licenses in good standing to receive equivalent, which is outdated because it only applied to provide licenses to those agents who held licenses on July 13, 2000, which were abolished by a change in law effective on July 14, 2000. Because the regulation addressed a discrete issue that is no longer relevant, the regulation should be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing two (2) obsolete administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals two (2) administrative regulations that are no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not have a direct impact on insurers or other regulated entities as it repeals an administrative regulation that was promulgated pursuant to obsolete statutes and does not change existing business practices of the Department of Insurance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action because of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of these regulations will provide clarity on compliance requirements for regulated entities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer the repeal of these regulations.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Commissioner's Office

(Repealer)

806 KAR 24:022. Repeal of 806 KAR 24:020.

RELATES TO: KRS 304.24-410

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 24:020, Change of control through capital stock acquisition, which is outdated and lacking statutory because KRS 304.24-410 was repealed.

Section 1. 806 KAR 24:020, Change of control through capital stock acquisition, is hereby repealed.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2017

FILED WITH LRC: July 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2017 at 11:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on August 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-266, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 24:020.

(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 24:020, Change of control through capital stock acquisition, which is outdated and lacks statutory authority as the authorizing statute, KRS 304.24-410, has been repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the

effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing one (1) obsolete administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals one (1) administrative regulation that is no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not have a direct impact on insurers or other regulated entities as it repeals an administrative regulation that was promulgated pursuant to an obsolete statute and does not change existing business practices of the Department of Insurance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action because of this repealer regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this repealer regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of these regulations will provide clarity on compliance requirements for regulated entities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this repealer regulation.

(b) On a continuing basis: There will not be a continuing cost related to this repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The repealer will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The repealer will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer the repeal of these regulations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

Medical Review Panel Branch

(New Administrative Regulation)

900 KAR 11:010. Medical review panels.

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

- (a) Attorney notifies the cabinet that the application is withdrawn; or
- (b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

- (a) Are licensed by that agency;
- (b) Are natural persons; and
- (c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

- (a) Name;
- (b) Mailing address;
- (c) Business address;
- (d) Type of license; and
- (e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

- (a) May be filed on Form MRP-002; and
- (b) Shall include:
 - 1. The name and current mailing address, phone number, and if known, email address of each named party;
 - 2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;
 - 3. Identification of the claimant, including:
 - a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or
 - b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;
 - 4. A description of the malpractice and malpractice-related claims against each named health care provider, including:
 - a. The nature of the patient's injury;
 - b. The appropriate standard of care with which each defendant was expected to comply;
 - c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and
 - d. How this failure caused or contributed to the claimant's injury;
 - 5. The date of the alleged occurrence of malpractice; and
 - 6. The signature of the claimant or the claimant's counsel, if retained.

(2) Each proposed complaint shall be accompanied by a filing fee:

- (a) In the amount of \$125, plus twelve (12) dollars for each defendant;
- (b) In the form of a check or money order; and
- (c) Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) The proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

- 1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and
- 2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

- (a) Of the date service on all defendants was completed; and
- (b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via e-mail to mrp@ky.gov.

(b) A proposed complaint and the required filing fee shall not be submitted via email.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to:

1. Send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the

appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section 8(4)(b) of this administrative regulation, to provide the notifications required by KRS 216C.110(1) and (2), and to outline the schedule for submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section 8(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

- a. Discuss the evidence;
- b. Reach a decision; and
- c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re Convening Panel, may be used by the panel chairperson to notify the parties that the panel plans to convene a hearing in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

- 1. Email addresses to use to submit evidence in electronic

form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

(a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and

(b) May use Form MRP-018, Chairperson Letter to Panel re Evidence, as a template for the written notification required by paragraph (a) of this subsection.

Section 9. Panel Decision. (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section 10 of this administrative regulation to:

- (a) Each party;
- (b) Each medical review panel member; and
- (c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 10. Payment for Panel Members and Chairperson.

(1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section 9 of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued

because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4)(a) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

(i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and

(ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

1. From the date of the panel's report or the date of the settlement; and

2. At the current Kentucky post-judgment interest rate.

Section 11. Settlements or Withdrawals. (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(3)(a) If the settlement or withdrawal occurs after the chairperson is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section 10(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

Section 12. Sample Form for Waiver of Medical Review Panel Process. (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this

administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", June 2017;

(b) Form MRP-002, "Proposed Complaint", June 2017;

(c) Form MRP-003, "Acknowledgement of Complaint Filing", June 2017;

(d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", June 2017;

(e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", June 2017;

(f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", June 2017;

(g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", June 2017;

(h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", June 2017;

(i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", June 2017;

(j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", June 2017;

(k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", June 2017;

(l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", June 2017;

(m) Form MRP-013, "Chairperson Letter to Party re Strike", June 2017;

(n) Form MRP-014, "Chairperson Letter to Panel Members re Selection to Serve", June 2017;

(o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;

(p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", June 2017;

(q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", June 2017;

(r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;

(s) Form MRP-019, "Chairperson Letter to Parties re Convening Panel", June 2017;

(t) Form MRP-020, "Administrative Subpoena", June 2017;

(u) Form MRP-021, "Oath for Panel Members", June 2017;

(v) Form MRP-022, "Panel Member's Opinion", June 2017;

(w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", June 2017;

(x) Form MRP-024, "Time and Expense Report for Panel Members", June 2017;

(y) Form MRP-025, "Time and Expense Report for Chairperson", June 2017;

(z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", June 2017;

(aa) Form MRP-027, "Notification of Settlement or Withdrawal", June 2017; and

(bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at <http://mrp.ky.gov>.

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 19, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on August 21, 2017 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, Deputy General Counsel, (502) 564-7905, ext. 3439, molly.lewis@ky.gov; or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions and requirements regarding medical review panels and establishing the fee required by KRS 216C.040(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the required fee and incorporating by reference standard forms for the cabinet and medical review panel chairpersons to use throughout the medical review panel process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky, attorneys who wish to serve as medical review panel chairpersons, and licensed health care providers who will be potential defendants or medical review panel members. However, because this is a new process created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), it is not possible to provide the number of individuals affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with KRS Chapter 216C, anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky needs to use the medical review panel process (or specifically waive that process as permitted by KRS 216C.030). This administrative regulation establishes the process for attorneys to apply to be a panel chairperson and the various forms needed for uniform administration of medical review panels in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 216C.040 requires payment of a filing fee established by the Cabinet for Health and Family Services. That fee is established by this administrative regulation in the amount of \$125, plus \$12 for each defendant, in the form of a check or money order, payable to the Kentucky State Treasurer. Additional costs are specifically established by KRS Chapter 216C, not this administrative regulation, and include a \$25 fee if the parties desire the cabinet to select a panel chairperson (KRS 216C.070(2)), and the fees and reasonable travel expenses for medical review panel members and the chairperson (KRS 216C.220).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is compliance with KRS Chapter 216C, which established the medical review panel process for Kentucky to review proposed malpractice complaints against health care providers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Initial costs will be borne by the CHFS Secretary's Office through utilization of current personnel and assets.

(b) On a continuing basis: As the program grows, continuing costs will be partially reimbursed by user fees and partially by the CHFS Secretary's office. Independent funding may be sought from the FY 18/19 budget through the 2018 legislative session. Anticipated costs are personnel costs for two full time administrative support personnel and one half of one supervisory attorney.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Until separate budgetary authority is achieved, costs will be borne in part by user fees and in part by the CHFS Secretary's office funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Because this is a new program just created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), the filing fee established in this administrative regulation is a new fee, specifically required by KRS 216C.040(3).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. Because this is a new program just created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), the filing fee established in this administrative regulation is a new fee, specifically required by KRS 216C.040(3).

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, various licensing agencies of health care providers, and the Judicial Branch.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 216C.010, 216C.030, 216C.040, 216C.050,

216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? KRS 216C.040 requires payment of a filing fee established by the Cabinet for Health and Family Services. That fee is established by this administrative regulation in the amount of \$125, plus \$12 for each defendant, in the form of a check or money order, payable to the Kentucky State Treasurer. The other revenue for the cabinet is a \$25 fee if the parties desire the cabinet to select a panel chairperson (established by KRS 216C.070(2)). However, because this is a new process created by 2017 Ky. Acts ch. 22 (KRS Chapter 216C), it is not possible to provide the number of individuals who will be filing complaints with the cabinet to initiate the medical review panel process or the number of parties who will request the cabinet to select a panel chairperson. Thus, it is not known how much revenue this administrative regulation will generate for the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Please see the detailed answer to subpart (a).

(c) How much will it cost to administer this program for the first year? Initial costs will be borne by the CHFS Secretary's Office through utilization of current personnel and assets.

(d) How much will it cost to administer this program for subsequent years? As the program grows, continuing costs will be partially reimbursed by user fees and partially by the CHFS Secretary's office. Independent funding may be sought from the FY 18/19 budget through the 2018 legislative session. Anticipated costs are personnel costs for two full time administrative support personnel and one half of one supervisory attorney.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 100:180. Technologically Enhanced Naturally Occurring Radioactive Material related to oil and gas development.

RELATES TO: KRS 189.150, 211.842-211.990, 216B.050(22), Chapters 224 and 353, 401 KAR Chapters 47 and 48, 902 KAR 100:010, 100:019, 100:021, 100:022, 100:040

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(a), 211.842, 211.844(1), 211.863(6), 211.865, 211.893(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.893(2) directs the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing technologically enhanced naturally occurring radioactive material (TENORM). This administrative regulation establishes radiation protection standards for the possession, use, transport, transfer, and disposal of TENORM

related to oil and gas development.

Section 1. Definitions. (1) "Activity concentration" means the rate of disintegration (transformation) or decay of radioactive material per unit of dry mass.

(2) "Oil and gas development":

(a) Means the drilling, operation, and closure of a well permitted and regulated pursuant to KRS Chapter 353, including:

1. A stratigraphic test well;
2. An oil and gas production well;

3. A well drilled or used for enhanced recovery or for disposal of oil and gas-related wastes; or

4. A related production and storage facility; and

(b) Includes gathering lines, but does not include subsequent transmission or processing of produced oil or gas not permitted or regulated pursuant to KRS Chapter 353.

(3) "Technologically Enhanced Naturally Occurring Radioactive Material" or "TENORM" is defined by KRS 211.862(13).

(4) "Well operator" is defined by KRS 353.010(20).

Section 2. Applicability. (1) This administrative regulation shall apply to a person who receives, owns, possesses, uses, processes, transfers, transports, distributes, arranges for the disposal of, or disposes of TENORM with an activity concentration greater than five (5.0) picocuries per gram of combined radium-226 (Ra-226) and radium-228 (Ra-228).

(2) This administrative regulation shall apply only to TENORM related to oil and gas development.

(3) Each person subject to this administrative regulation shall manage and dispose of waste containing TENORM:

(a) Pursuant to Section 6 of this administrative regulation; or

(b) In accordance with an alternate method authorized by the cabinet upon written request or upon the cabinet's initiative in accordance with this administrative regulation and administrative regulations of the Energy and Environment Cabinet.

(4) Exemptions to this administrative regulation are found in Section 3 and are not considered a hazard to public health based on scientific and health rationale.

Section 3. Exemptions. The following are exempt from the requirements of this administrative regulation:

(1) Background activity concentrations upon specific request and the written approval of the cabinet;

(2) Drill cuttings and associated residual pit fluids from wells permitted pursuant to KRS Chapter 353 and managed in accordance with the requirements of that chapter; and

(3) Water produced from or utilized during oil or gas well development or production operations, including produced water and water flowed back following hydraulic fracturing operations that is disposed of in injection wells that are regulated and permitted in accordance with KRS Chapter 353 and, where applicable, the Safe Drinking Water Act and Underground Injection Control Program.

Section 4. Sample Collection and Analysis. (1) All sample collection pursuant to this section shall be conducted so as to be representative of the entire waste load or container.

(2) Sample collection and analysis of the TENORM-containing waste shall take place prior to disposal in the following manner:

(a) 1. At least five (5) representative samples taken randomly from within the load or container shall be composited into one (1) sample and analyzed; or

2. For tubing, a representative sample shall be taken every 500 feet;

(b) Analysis of TENORM waste proposed to be transported off-site for management or disposal shall be conducted by a laboratory accredited by the National Environmental Laboratory Accreditation Conference to perform radiological analysis.

(c) Each sample analyzed by an accredited laboratory shall be analyzed for the activity concentration of combined Ra-226 and Ra-228;

(d) For TENORM waste being disposed of downhole pursuant to Section 6(4) of this administrative regulation, sample collection and analysis shall be performed:

1. Pursuant to paragraph (a)-(c) of this subsection; or
 2. At the election of the well operator, by measuring the highest on-contact radiation exposure rate or radiation dose rate reported in microrentgen per hour ($\mu\text{R/hr}$) or microrem per hour ($\mu\text{rem/hr}$) through the use of a portable radiation detector that is:

- a. Appropriate for the radiation being measured; and
- b. Calibrated at least annually.

(e) The cabinet may require additional testing if another progeny is considered to be of primary concern.

(3) For the purpose of determining disposal method pursuant to Section 6 of this administrative regulation, sample collection and analysis meeting the requirements of subsection (2) of this section may additionally occur after the waste has been prepared or treated for disposal as long as the waste is not treated beyond the minimum required for disposal.

Section 5. Transporting TENORM Waste for Management or Disposal. (1) TENORM waste being transported for management or disposal shall be:

(a) Accompanied by a waste profile or manifest document pursuant to Section 8 of this administrative regulation;

(b) Covered and contained during transportation in accordance with standards of the U.S. Department of Transportation and Kentucky Transportation Cabinet; and

(c) Packaged or stabilized as needed to prevent dispersion during transportation or landfill placement.

(2) Other than TENORM wastes stored on-site prior to disposal in conjunction with an oil or gas operation permitted pursuant to KRS Chapter 353 and those materials awaiting return transportation following rejection at the disposal facility in accordance with Section 6(6)(c) of this administrative regulation, the storage or treatment of TENORM waste is allowed only if licensed pursuant to 902 KAR 100:040.

Section 6. Disposal of Waste. (1) TENORM waste with an activity concentration greater than five (5.0) and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 shall be disposed in a:

(a) Landfill meeting the design and construction standards of a contained landfill as defined by the Energy and Environment Cabinet that:

1. Possesses a current permit demonstrating compliance with the requirements of KRS Chapter 224 and administrative regulations promulgated thereunder; and

2. Ensures the disposal is in accordance with statutory provisions of KRS Chapter 224 and regulatory provisions of KAR Title 401 that apply specifically to the disposal of TENORM waste in such a facility;

(b) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section; or

(c) Landfill meeting the requirements of subsection (2)(a) or (2)(b) of this section.

(2) TENORM waste with an activity concentration greater than 100 and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Landfill located in Kentucky specifically permitted by the Energy and Environment Cabinet to accept such TENORM wastes for disposal or located in Illinois as specified under the terms and conditions of the Central Midwest Interstate Low-Level Radioactive Waste Compact pursuant to KRS 211.859;

(b) Licensed low-level radioactive waste disposal facility as directed by 902 KAR 100:021; or

(c) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section.

(3) TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Licensed low-level radioactive waste disposal facility as directed by 902 KAR 100:021; or

(b) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section.

(4) The downhole disposal of TENORM waste into a well located on the same lease, pool, or unit from which the TENORM

waste was generated is allowed if:

(a) The well is permitted by the Energy and Environment Cabinet;

(b) Disposal is done in accordance with the requirements of the Energy and Environment Cabinet; and

(c) The radioactivity is analyzed pursuant to Section 4(2)(d) of this administrative regulation and reported to and maintained by the Energy and Environment Cabinet.

(5)(a) TENORM waste imported from outside of Kentucky or Illinois is prohibited from being disposed of in Kentucky pursuant to KRS 211.859.

(b) The disposal of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 in a landfill in Kentucky is prohibited.

(6) Prohibited TENORM waste that is delivered to a landfill for disposal shall be rejected. The owner or operator of the landfill shall:

(a) Record the:

1. Source;
2. Amount;
3. Generator; and

4. Other identifying information about the rejected waste; and

(b) Notify the cabinet by telephone, fax, or electronic mail within one (1) business day of the rejection, impoundment, and quarantine of such material. Contact telephone numbers are established in 902 KAR 100:040, Section 15(3); and

(c) Impound and quarantine the waste load until the cabinet determination on the disposition of the waste providing that the impounding and quarantining of such waste by the owner or operator of the landfill shall not constitute storage nor cause the owner or operator of the landfill to become responsible under law for the further management or disposition of such waste.

(7) Records of disposal, including waste profiles and manifests, shall be maintained by the owner or operator of the landfill for thirty (30) years after closure of the facility.

Section 7. Material or Real Property Containing TENORM. (1) The transfer of TENORM not exempt pursuant to Section 3 is authorized if the equipment and facilities contaminated with TENORM are to be used by the recipient for the same purpose.

(2) Transfers made pursuant to subsection (1) of this section do not relieve the person making the transfer from the responsibilities of assessing the extent of TENORM contamination or material present, informing the person receiving the TENORM of these assessments, and maintaining records required by this administrative regulation.

(3) The transfer of TENORM products not exempt in Section 3 is authorized provided the requirements of this section are met and the product is accompanied by a waste profile or manifest document pursuant to Section 8.

(4) The remediation of material contaminated with TENORM shall be performed only if licensed to do so pursuant to 902 KAR 100:040.

Section 8. Record Keeping Requirements. (1) A person in possession of TENORM waste with an activity concentration greater than five (5.0) pCi/g and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 being transported for management or disposal shall maintain and provide to the off-site treatment or disposal facility receiving such waste a waste profile or manifest containing such information as required by the Energy and Environment Cabinet.

(2) A person in possession of TENORM waste with an activity concentration greater than 100 pCi/g and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 being transported shall maintain a copy of the TENORM Manifest, RPS 180. The manifest shall contain the:

(a) Name and signature of any:

1. Generating facility owner or operator;
2. Transporter company; and
3. Receiving facility owner or operator.

(b) Identity and business contact information of the accredited laboratory that analyzed the samples;

(c) Type, amount, activity concentration, and source of

TENORM being transported; and

(d) Unique tracking number established by the generator.

(3) A person in possession of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 activity concentration being transported shall maintain records in accordance with 902 KAR 100:021.

Section 9. Worker Training and Safety. (1) A landfill approved for the disposal of TENORM waste pursuant to Section 6(2) shall implement a worker training program and safety program to meet the requirements of 902 KAR 100:019.

(2)(a) A landfill permitted to accept TENORM waste pursuant to Section 6(2) shall monitor individuals for exposure to radiation and radioactive material as required by 902 KAR 100:019, Section 13, for at least two (2) years.

(b) Personnel dosimeters shall meet the requirements of 902 KAR 100:019, Section 12.

(c) If the average result is less than 200 millirems (2.0 mSv) per year, suspension of individual monitoring may be requested and approved in writing by the cabinet.

Section 10. Violations. (1) A violation of this administrative regulation shall be subject to KRS 211.869(1) and (3) and KRS 211.990(2) and (4).

(2) A violation of an Energy and Environment Cabinet regulation referenced in this administrative regulation shall not be subject to the provisions of KRS 211.869 or KRS 211.990.

Section 11. Incorporation by Reference. (1) Form RPS 180, "TENORM Manifest", 7/2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jennifer Wolsing, Jennifer.Wolsing@ky.gov, phone 502-564-7905, ext. 3414, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes radiation protection standards for the possession, use, transport, transfer, and disposal of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) related to oil and gas development.

(b) The necessity of this administrative regulation: KRS 211.842(1) states that the Cabinet is the radiation control agency

of the State of Kentucky. House Bill 563 passed as emergency legislation in the 2016 Regular Session and created KRS 211.893. KRS 211.893(2) directs the Cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing NORM.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.893(2) directs the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing NORM. KRS 211.863 was amended in the 2017 Regular Session to give the Cabinet the authority to regulate as TENORM any naturally occurring radioactive material made more accessible by human activity, or naturally occurring radioactive material that has radionuclide concentrations increased by human activities above levels encountered in the natural state. This administrative regulation contains safe methods of disposal for TENORM of different radioactivity levels related to oil and gas development.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Generators of TENORM waste related to oil and gas development and those involved with the disposal of TENORM waste will be informed on the safe dispose of radioactive material.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Oil and gas development, processors and transferors of oil and gas development related wastes, specific licensees, landfills receiving oil and gas related wastes, and the Energy and Environment Cabinet as it permits oil and gas operations and the landfill industry. KRS 211.893 encourages the Energy and Environment Cabinet and Cabinet for Health and Family Services to seek input from stakeholders in the development of this administrative regulation, resulting in the reemergence of an oil and gas workgroup. This workgroup is composed of representatives from the Energy and Environment Cabinet, Kentucky Chamber of Commerce, Kentucky Geological Survey, oil and gas industry, landfill industry, environmental advocacy groups, and the Cabinet for Health and Family Services. The public at large has also attended these meetings. This administrative regulation is the result of workgroup meetings and communications.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Generators of oil and gas development related waste containing TENORM will be required to obtain representative samples of the load or container, composite the sample if able, and have it analyzed for the activity concentration of Radium-226 and -228. How the waste is disposed of is determined by its radioactivity, whether that be on-site, down-hole disposal, in a facility permitted as a landfill, in a special TENORM landfill, or in a low level radioactive waste (LLRW) facility. Required information must be recorded on a TENORM manifest and the manifest will accompany the waste throughout transfer(s) to the disposal facility. If one were established in Kentucky, a TENORM specific landfill would be required to implement a worker training program and

safety program and shall monitor individuals for exposure to radiation for at least two years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The tests for activity concentration from a waste sample costs approximately \$100.00. The cost of disposal will vary depending on the radioactivity of the waste, but it will be cheaper or the same as current costs as all TENORM wastes must be transferred to a LLRW facility out west in the absence of this regulation. The radiation monitoring a TENORM specific landfill would have to perform would cost about \$20.00/person/year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The oil and gas industry related to development and landfill industry will have reduced liability and will know that following this regulation results in less risk of radiation exposure to the citizens of Kentucky. Depending on the level of radioactivity, some waste will be disposed of on-site, at a regular landfill, or down-hole instead of having to be transferred to another state. There are currently no TENORM-specific landfills in Kentucky, but this regulation may make their development economically feasible.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the administrative body associated with this administrative regulation or the enforcement of such. The administrative body will only be involved upon request or complaint, as it currently is in TENORM matters.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: No increase in fees or funding is associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this amendment.

(9) TIERING: Is tiering applied? Yes. This administrative regulation contains different methods of disposal for different radioactivity levels of TENORM waste. This administrative regulation is not applicable concerning TENORM waste with a radioactivity level of five (5.0) picocuries per gram or less.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Energy and Environment Cabinet will be promulgating and amending administrative regulations for the permitting and enforcement of activities associated with this program (oil and gas industries and landfills) and referencing this administrative regulation for radiation standards.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.842(1) states that the cabinet is the radiation control agency of the State of Kentucky. House Bill 563 passed as emergency legislation in the 2016 Regular Session and created KRS 211.893. KRS 211.893(2) directs the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing NORM. KRS 211.863 was amended in the 2017 Regular Session to give the cabinet the authority to regulate as TENORM any naturally occurring radioactive material made more accessible by human activity, or naturally occurring radioactive material that has radionuclide concentrations increased

by human activities above levels encountered in the natural state.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation and the radiation control program is already in operation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation and the radiation control program is already in operation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Repealer)

922 KAR 1:421. Repeal of 922 KAR 1:420.

RELATES TO: KRS 211.680-211.686, 620.030-620.050, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. This administrative regulation repeals 922 KAR 1:420 governing child fatality or near fatality investigations. The current content of 922 KAR 1:420 shall be incorporated within 922 KAR 1:330.

Section 1. 922 KAR 1:420, Child fatality or near fatality investigations, is hereby repealed.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment

on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 1:420, Child fatality or near fatality investigations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 922 KAR 1:420 due to its current content being incorporated within a concurrent amendment to 922 KAR 1:330.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:420.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:420.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the cabinet's *Child Abuse and Neglect Annual Report of Child Fatalities and Near Fatalities* released September 1, 2016, during State Fiscal Year 2016, fifty (50) child fatality and near fatality cases were identified as being the result of maltreatment. This number may change pending the outcome of an active investigation or appeal at the time of the report.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will not impact the investigation of child fatalities or near fatalities. Rather, the current content of 922 KAR 1:420 is proposed for incorporation within 922 KAR 1:330 governing child protective services. Child fatality and near fatality investigations are a subset of child protective services investigations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost applicable to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The current content of 922 KAR 1:420 has been reorganized so that investigative policies are found in 922 KAR 1:330, which may enhance clarity and ease in reference.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no new or additional costs associated with

this repealer.

(b) On a continuing basis: There are no new or additional costs associated with this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1), 605.150(1), 620.180(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The only purpose of this administrative regulation is to repeal 922 KAR 1:420.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The only purpose of this administrative regulation is to repeal 922 KAR 1:420.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.150(1), 620.180(1), 42 U.S.C. 5106a(b)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repealer will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repealer will generate no revenue.

(c) How much will it cost to administer this program for the first year? This repealer creates no new cost in the initial year.

(d) How much will it cost to administer this program for subsequent years? This repealer creates no new cost in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Administrative Regulation)

922 KAR 1:550. Operator's license for children in the custody of the cabinet.

RELATES TO: KRS 186.450, 186.470, 186.480, 186.590, 199.011(3), (4), (15), 600.020(2), (52), 605.102, 42 U.S.C. 672, 675, 677

STATUTORY AUTHORITY: KRS 194A.050(1), 605.102(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.102 authorizes the cabinet to promulgate an administrative regulation to implement a process utilizing the reasonable and prudent parent standard, in conjunction with the child's caregiver, to: (1) verify that a child in the custody of the cabinet is age or developmentally appropriate to apply for an operator's license, motorcycle operator's license, intermediate license, or instruction permit, and (2) request cancellation of a child's operator's permit or license. This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license.

Section 1. Definitions. (1) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(2) "Cabinet" is defined by KRS 199.011(3) and 600.020(7).

(3) "Caregiver" is defined by KRS 605.102(1).

(4) "Child" is defined by KRS 199.011(4) and 600.020(9).

(5) "Reasonable and prudent parent standard" is defined by 199.011(15) and 600.020(52).

Section 2. Eligibility determination and application. (1) The cabinet and the child's caregiver shall use the reasonable and prudent parent standard to determine a child's readiness to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(2) The cabinet shall form a team to include:

(a) The child;

(b) The child's caregiver or caregiver representative, including the child's foster parent if applicable; and

(c) Another person involved with the child who shall assist the cabinet in making a determination whether the child is age or developmentally appropriate to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(3) The child's team shall discuss the following to ascertain the child's readiness to obtain his or her instruction permit or operator's license:

(a) The child's understanding of the requirements to obtain an instruction permit or operator's license;

(b) The child's roles and responsibilities in meeting the operator's permit or license requirements;

(c) Liability and financial responsibilities;

(d) Ongoing academic requirements;

(e) Age and developmental level in accordance with KRS 605.102;

(f) Placement history and current placement stability;

(g) Previous driving history when applicable; and

(h) Child's history of public charges.

(4) The child shall:

(a) Obtain a copy of his or her commitment order from cabinet staff or the court;

(b) Complete the DPP-17, Readiness for Driving Agreement; and

(c) Authorize the cabinet to request and inspect the child's driving record.

(5) If a child's team determines that a child possesses the requisite skills and understanding of the responsibilities associated with obtaining an operator's permit or license and operating a motor vehicle or motorcycle, the child's team shall allow the child to proceed with the application process.

(6) Prior to a child proceeding to the circuit clerk's office to obtain his or her instruction permit, cabinet staff shall provide verification to the child on cabinet letterhead that the child is in foster care.

(7) Any person who signs an operator's permit or license application for a child shall be responsible in accordance with KRS 186.470 or 186.590.

(8) A child's team shall develop a plan to assist a child in obtaining an operator's permit or license in the future if:

(a) The team determines that the child is not ready to apply; and

(b) The barrier to obtaining an operator's permit or license is within the ability of the child to correct.

Section 3. Insurance. (1) A child in the custody of the cabinet shall:

(a) Be added to his or her caregiver's insurance policy; or

(b) Apply to obtain a non-owner insurance policy with the assistance of the cabinet to the extent that resources are available.

(2) To the extent that funds are available, the cabinet shall:

(a) Fund, in whole or part, a non-owner insurance policy for a child; or

(b) Reimburse, in whole or part, a caregiver who has added a foster child to a vehicular insurance policy for the foster child's portion of the premium.

(3) Any person who permits a minor under the age of eighteen (18) to drive his or her vehicle shall comply with KRS 186.590.

(4) A child in the custody of the cabinet shall follow all procedures required by the insurance company during the application process.

Section 4. Cancellation. (1) Cancellation of an operator's license, motorcycle operator's license, intermediate license, or instruction permit for a child in the custody of the cabinet shall be made in accordance with KRS 186.470 and 605.102.

(2) A person who files the verified written request for cancellation of a child's operator's license, motorcycle operator's license, intermediate license, or instruction permit shall provide notice to the cabinet in accordance with KRS 186.470.

Section 5. Incorporation by Reference. (1) "DPP-17, Readiness for Driving Agreement", 7/17, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 29, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, (502) 564-3703, Elizabeth.Caywood@ky.gov; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2017 Ky. Acts ch.11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by allowing children in the custody of the cabinet, who are age or developmentally appropriate, and who meet statutory requirements, to apply for and obtain their operator's license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of a process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license in accordance with 2017 Ky. Acts ch. 11.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect children in foster care who are sixteen (16) and seventeen (17) years of age and wish to obtain an operator's permit or license. There are approximately 1,300 children age sixteen (16) and seventeen (17) years currently in the custody of the cabinet, though a percentage of the children will not seek an operator's permit or license, will not meet statutory requirements regarding school attendance and academic achievement, or will not present as age or developmentally appropriate.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A foster child will be required to undergo an assessment by the cabinet and the child's caregiver, the child's team, to determine whether the child is age or developmentally appropriate--measures commensurate with any parent's determination about a child's appropriateness to pursue an operator's permit or license. The foster child will also be required to authorize the cabinet to request and inspect the child's driver's history.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not directly impose any new costs on regulated entities. To the extent resources are available, the cabinet will absorb costs for children to obtain an operator's permit or license and insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will have a

higher degree of normalcy as a result of this administrative regulation. Obtaining an operator's permit or license could positively affect the foster children by allowing them to experience the same rites of passage as other children their age and to pursue academia and employment to support a smoother transition into, and greater self-sufficiency in, adulthood.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), including Chafee Foster Care Independence Program funds, and State General Funds are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increases in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, 675, 677

2. State compliance standards. KRS 194A.050(1), 605.102(6)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, 675, 677

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky Transportation Cabinet, and circuit clerks will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.102(6), 42 U.S.C. 672, 675, 677

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation may generate revenue in the form of permit and license fees for youth who had previously been unable to obtain a permit or license prior to age 18.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This administrative regulation may generate revenue in the form of permit and license fees.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 11, 2017

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 11, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 2017 meeting were approved.

Present were:

Members: Senators Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Mary Lou Marzian, Jason Petrie, Tommy Turner and Ken Upchurch.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Alan Pauw, Judicial Retirement Systems; Margaret Walton, Secretary of State; Gwen Pinson, Finance and Administration Cabinet; Morgan Ransdell, Paula Schenk, Board of Nursing; Amber Arnett, Steve Beam, Karen Waldrop, Department for Fish and Wildlife; Amy Barker, Terry Manuel, Department of Corrections; Beth Milburn, Kevin Osborne, Department for Libraries and Archives; Andy Hightower, Beth Kuhn, Department of Workforce Investment; Laura Begin, Jeffery Sparks, Office of Vital Statistics.

The Administrative Regulation Review Subcommittee met on Tuesday, July 11, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Judicial Form Retirement System

4 KAR 1:010. General compliance with federal tax laws. Alan Pauw, attorney with Reed Weitkamp Schell and Vice, represented the system.

In response to a question by Co-Chair Harris, Mr. Pauw stated that he was unable to respond to inquiries regarding actuarial assumptions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend Sections 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

4 KAR 1:040. Limitation of benefits.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add one definition; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

4 KAR 1:050. Code of professional conduct.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF SECRETARY OF STATE: Certifications

30 KAR 2:010. Certification of vacancy in nominations. Margaret Walton, director of business, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to specify examples of documentation that can be submitted to substantiate a vacancy due to death; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

30 KAR 5:060. Search requests and reports.

In response to questions by Co-Chair Harris, Ms. Walton stated that financing statements were filed with the Office of Secretary of State against both individuals and property. General-y, financing statements were filed against movable objects, such as vehicles, crops, and construction or farm equipment. Liens against property

were usually filed with the clerk's office, rather than with the Secretary of State. Bankruptcies were not usually filed with the Secretary of State.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing

200 KAR 5:081. Repeal of 200 KAR 5:081. Gwen Pinson, general counsel, represented the office.

GENERAL GOVERNMENT CABINET: Board of Nursing

201 KAR 20:070. Licensure by examination. Morgan Ransdell, staff attorney supervisor, and Paula Schenk, executive director, represented the board.

In response to questions by Senator Clark, Ms. Schenk stated that she was unaware of any specific efforts to recruit nurses from Puerto Rico. Puerto Rican nursing program requirements did not comply with those of the rest of the U.S.; therefore, the board required applicants to complete the visa-screening process with an evaluation of their nursing program requirements.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:225. Reinstatement of license.

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:222. Waterfowl hunting requirements on public lands. Amber Arnett, attorney; Steve Beam, wildlife division director; and Karen Waldrop, deputy commissioner, represented the department.

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.

In response to a question by Co-Chair Harris, Ms. Waldrop stated that wetland and water-fowl areas prohibited lead shot from being used. This administrative regulation expanded the areas and the species covered. Lead shot was not prohibited for squirrel hunting.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Parole Board

501 KAR 1:030 & E. Determining parole eligibility. Amy Barker, assistant general counsel, represented the cabinet.

In response to a question by Senator Clark, Ms. Barker stated that time-served requirements were established as percentages based on when each crime was committed. The most current percentage was twenty (20) percent.

In response to questions by Co-Chair Harris, Ms. Barker stated that the change in this administrative regulation was in response to Louisville's incarceration overcrowding problem, thus necessitating the emergency administrative regulation. 501 KAR 6:140 addressed a mini-mum-security facility, Bell County Forestry Camp.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph to correct a citation. Without objection, and with agreement of the agency, the amendment was approved.

Office of the Secretary

501 KAR 6:140. Bell County Forestry Camp.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Libraries and Archives

725 KAR 2:070. Certification renewal of public librarians. Terry Manuel, commissioner; Beth Milburn, division director; and Kevin Osborne, attorney, represented the department.

In response to a question by Senator Clark, Mr. Manuel stated that the workshop, lecture series, and training program references pertained to continuing education.

A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workforce Investment: Employment Services

787 KAR 2:040 & E. Local workforce development area governance. Andy Hightower, senior policy advisor, and Beth Kuhn, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Vital Statistics

901 KAR 5:061. Repeal of 901 KAR 5:060. Laura Begin, regulation coordinator, and Jeffrey Sparks, administrative section supervisor, represented the division.

901 KAR 5:120. Induced termination of pregnancy reporting.

In response to a request by Representative Marzian, Ms. Begin provided a copy of the Report of Induced Termination of Pregnancy form to Representative Marzian. In response to a question by Representative Marzian, Ms. Begin stated that Vital Statistics did not require similar reporting for other healthcare procedures, such as a colonoscopy or eye surgery. Representative Marzian stated that it was interesting that many Kentuckians were opposed to government intrusion; however, this administrative

regulation required government reporting on the most personal private decisions made by Kentuckians. Representative Marzian requested to be recorded as voting in opposition to this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Harris introduced a new administrative regulations analyst, Stacy Auterson. The Subcommittee welcomed Mr. Auterson.

The following administrative regulations were deferred or removed from the July 11, 2017, Subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:020. Occupation-based career and technical education certification.

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation.

Advanced Certification and Rank

16 KAR 8:040. Ranking of occupation-based career and technical education teachers.

GENERAL GOVERNMENT CABINET: Board of Pharmacy

201 KAR 2:076. Compounding.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:011. Repeal of 401 KAR 8:070, 401 KAR 8:101, 401 KAR 8:550, and 401 KAR 8:600.

401 KAR 8:020. Public and semipublic water systems; submetering; general provisions.

401 KAR 8:040. Laboratory certification.

401 KAR 8:075. Consumer confidence reports and public notification.

401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8.

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, maximum contaminant levels, radionuclides, and secondary standards.

Division of Waste Management: Solid Waste Planning

401 KAR 49:011. General provisions relating to area solid waste management plans.

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

401 KAR 49:091. Repeal of 401 KAR 49:040, 401 KAR 49:090, and 401 KAR 49:210.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services community.

TRANSPORTATION CABINET: Department of Vehicle

VOLUME 44, NUMBER 2 – AUGUST 1, 2017

Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:

Department of Workplace Development: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:230. Extended hours supplemental licenses.

Local Administrators

804 KAR 10:010. Appointment notification of local administrator.

Department of Insurance: Health and Life Division: Health Insurance Contracts

806 KAR 17:575. Pharmacy benefit managers.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:125. Certificate of need annual surveys.

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers.

900 KAR 7:040. Release of public data sets for health care discharge data.

Department for Public Health: Division of Public Health Protection and Safety: Radon

902 KAR 95:040. Radon Contractor Certification Program.

Department for Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:041E. Repeal of 907 KAR 1:018 and 907 KAR 1:019.

Payment and Services

907 KAR 3:206E. Repeal of 907 KAR 3:205.

Outpatient Pharmacy Program

907 KAR 23:001 & E. Definitions for 907 KAR Chapter 23.

907 KAR 23:010 & E. Outpatient pharmacy program.

907 KAR 23:020 & E. Reimbursement for outpatient drugs.

The Subcommittee adjourned at 1:30 p.m. until August 14, 2017, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE REVIEW OF TRANSPORTATION
Meeting of July 6, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of July 6, 2017, having been referred to the Committee pursuant to KRS 13A.290(6):

601 KAR 1:018, referred on June 7, 2017
601 KAR 1:113, referred on July 5, 2017

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 6, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

B - 2

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2017 *Kentucky Administrative Regulations Service* was published.

KRS Index

B - 7

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 44 of the *Administrative Register of Kentucky*.

Technical Amendment Index

B - 11

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2017 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

B - 12

The Subject Index is a general index of administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			201 KAR 20:070		
* Statement of Consideration not filed by deadline			Amended	2187	See 44 Ky.R.
** Withdrawn, not in effect within 1 year of publication			201 KAR 20:110		
*** Withdrawn before being printed in Register			Amended	2189	See 44 Ky.R.
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 20:225		
IJC Interim Joint Committee			Amended	2191	
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			201 KAR 22:070		
-----			Amended	2022	See 44 Ky.R.
			201 KAR 26:125		
			Amended	1805	See 44 Ky.R.
			201 KAR 26:130		
			Amended	1807	See 44 Ky.R.
			201 KAR 26:140		
			Amended	1809	See 44 Ky.R.
			201 KAR 26:145		
			Amended	1811	See 44 Ky.R.
			201 KAR 26:155		
			Amended	1814	See 44 Ky.R.
			201 KAR 26:160		
			Amended	1816	See 44 Ky.R.
			201 KAR 26:165		
			Amended	1818	See 44 Ky.R.
			201 KAR 26:171		
			Amended	1819	See 44 Ky.R.
			201 KAR 26:175		
			Amended	1823	
			Reprint	2109	
			AmComments	2156	See 44 Ky.R.
			201 KAR 26:180		
			Amended	1826	
			AmComments	2158	See 44 Ky.R.
			201 KAR 26:185		
			Amended	1827	See 44 Ky.R.
			201 KAR 26:190		
			Amended	1829	See 44 Ky.R.
			201 KAR 26:200		
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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/KAR/frntpage.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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103 KAR 18:060	6-22-2017		
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Insurance; KAR Title 806

TEACHERS' RETIREMENT SYSTEM

Application for retirement; 102 KAR 1:070

TOURISM, ARTS AND HERITAGE CABINET

See listing below for specific subject headings:

Fish and Wildlife Resources; KAR Title 301

WORKPLACE STANDARDS

Occupational Safety and Health

Toxic and hazardous substances; 803 KAR 2:425